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Mongolia Judicial Reform Program

ANNUAL REPORT
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Cooperative Agreement

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Executive Summary

2003 marked the third year of the Mongolia Judicial Reform Project's (JRP) activities. By the end of the reporting period great strides had been made towards accomplishing all of the Priority Tasks outlined in the Cooperative Agreement and the Workplans.

Priority Task 1, *Court Management and Administration*:
The JRP assisted the courts and prosecutors' offices to conduct a scientific and well designed workload study. This marks the first time such detailed and accurate information has been collected in Mongolia to allow the GCC to efficiently allocate its scares resources. The GCC adopted a committee system recommended by the JRP which is a step towards making it a more democratic and collegial policy making body.

Priority Task 2, *Case Management:*
The JRP expanded on the success of the pilot courts and automated most of the courts in eastern and central Mongolia. Courts handling over three quarters of the national case load are using automation to provide greater transparency and accountability. Public Access Terminals in all these courts gave the public unprecedented access to the work of the courts and the reporting capabilities of the court networks greatly enhanced accountability.

Priority Task 3, *Review of the Organization, Structure, Jurisdiction and Responsibility of Justice System Agencies:*
The laws that last year redefined the jurisdictions of the courts and prosecutors' offices, drafted with JRP assistance, were being implemented with the assistance of management training provided by the JRP. Significant strides were being made in cooperation among the branches of the justice system in improving arrest and detention procedures, with an impact on human rights.

Priority Task 4, *Training and Continuing Education for Legal Professionals:*
The JRP efforts to create a Mongolian institution with the capacity to provide continuing legal education (CLE) to all Mongolian legal professionals in the multitude of new laws, concepts and practices that they need bore fruit with the creation of a strategic plan by the National Legal Center (NLC). JRP assisted this process by bringing an expert on strategic planning for CLE to Mongolia and taking the NLC leadership to the Annual Conference of the Association for Continuing Legal Education, networking and meetings with CLE experts in attendance, and site visits to successful CLE providers. The tour combined theory with practical experience. Through this, the NLC leadership built personal and institutional capacity and learned techniques to sustain the NLC.

Priority Task 5, *Establishment of a Professional Bar System*
The law requiring the certification of legal professionals was passed and JRP is working with the implementation committee which has accepted our recommendations about the best practices to ensure a fair, objective and transparent testing process.

Under Priority Task 6, *Ethics for the Legal Profession*
The JRP has worked with the two new bodies with responsibility for enforcing judicial ethics. The new Judicial Disciplinary Committee has made a significant increase in the number of judge's disciplined. The JRP last year had significant input on the design of the Committee and has assisted it with automation and information. The Special Investigative Unit reporting to the Prosecutor General with responsibility for investigating crimes by justice sector officials has had a spectacular first year. The JRP has provided extensive evaluation and training for the unit and has seen that it has the equipment it needed to begin operations. In its

first year, the number of successfully completed investigations of crimes committed by justice sector officials exceeded the prior 4 years combined.

In other areas, the JRP's efforts at donor coordination has resulted in near integration with the activities of GTZ the largest German aid donor in Mongolia and close coordination with the World Bank project which is implementing a five million dollar credit in the area of judicial reform. The JRP completed a public opinion survey which showed a small but statistically significant improvement in public perceptions of the courts. The JRP conducted an assessment of its accomplishments and how it better reach its goals with outside consultants and will incorporate these findings in its future work.

A. PROGRAM OBJECTIVES

The original USAID results framework envisioned the following Intermediate Results (IR) for the JRP:

> IR 1: Court administration and case management capacity strengthened.
> IR 2: A legal training center, providing continuing education for legal professionals, designed, developed and made operational.
>
> IR 3: An effective standardized qualifying system (which all lawyers will be required to pass before they are permitted to practice law) developed and made operational.
> IR 4: Revised ethical standards for legal professionals developed, adopted, and enforced.
> IR 5: Access to the Mongolian justice system broadened and improved.
> IR 6: Law school standards raised.
> IR 7: Independence of the judiciary strengthened

These objectives were articulated in six Priority Tasks by the key stakeholders. Detailed information about the activities conducted in 2003 under each Priority Task are outlined in Section B, including highlights, results, and future implications.

The midpoint of the JRP's work also marked a transition from USAID's 1999-2003 Strategic Plan to its 2004-2008 Strategic Plan for Mongolia. Under the 1999-2003 Strategic Plan, the JRP was guided by the democracy Strategic Objective (SO): ". . . to improve the effectiveness of Parliament, political parties and the judiciary."

USAID's 2004-2008 Strategic Plan reflected the success that the JRP had achieved helping Mongolia enact reform legislation and begin implementing a variety of reform activities. *Implementation* is the key objective of USAID's efforts. Strategic Objective 2 is "Strengthen 'Good Governance' and Make It More Accountable." Intermediate Result 2.1 is "Comprehensive Legal Reforms Implemented."

A great step towards the rule of law was taken when the Law on the Courts, the Law on the Prosecutor's Office, the Law on Enforcement of Judgments, the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code came into force in September 2002. The JRP's Year 3 activities have been building on prior achievements and focusing on assistance to implement these changes. However, passing laws is far easier than implementing them.

Several of the JRP's 2003 highlights include successful implementation activities:

- The move from pilot courts to widespread automation has permitted the implementation of more efficient operations that enhance transparency and accountability.
- The establishment of public access terminals and instant reporting capacity of automated courts has directly and observably improved public access.
- A comprehensive workload study was conducted to allow the rational allocation of human resources and allow improved management (e.g. review assignment of responsibilities to transfer some of the judges' administrative duties to assistants and other staff) for the courts and prosecutors' offices. The results are being used to argue against the appointment of additional judges and the allocation of resources to higher priorities. How well the Government of Mongolia uses this information will be a key

factor in evaluating its commitment of implementation of effective court administration.

- The JRP has built consensus around measures that need to be taken to ensure the implementation of the Criminal Procedure Code provisions on arrest and detention. These provisions transferred the power to issue arrest warrants from the prosecutors to the courts. Proper implementation is critical for both human rights and apprehending criminals.
- The creation of the National Legal Center (NLC) charged with training all legal professionals is the first step in implementing the training goals of the JRP. The JRP has been working to develop the capacity of the NLC to fulfill this mandate. With considerable assistance from the JRP, the NLC has drafted a strategic plan for implementation of this mandate. Moreover, the JRP has provided the NLC's trainers and managers with the necessary skills to accomplish their mandate.
- With the passage on the Law on the Qualification of Lawyers, JRP is assisting in the implementation of a Bar Examination system. The JRP gave considerable advice on the legislation creating the exam system and now attends the inter-agency committee meetings charged with implementation. The JRP is buying automatic grading machines to ensure the objective and transparent grading of the examination.
- The JRP's assistance to the Special Investigative Unit has resulted in dramatic implementation; an over 4 fold increase in the number of crimes by justice sector officials investigated and referred to the Procuracy for prosecution. The Disciplinary Committee which the JRP assisted has also increased the number of judges disciplined. Both mark significant implementation of the laws passed last year creating their structure.
- The JRP's ability to coordinate the work of the principle donors involved in legal reform in Mongolia has enabled it to focus the agenda of the Mongolian Government on implementation and assure more effective use of donor resources.

B. TASK-SPECIFIC PROJECT ACTIVITIES

In addition to, or as part of the cross-cutting issues mentioned below in section C, the JRP's activities in 2003 revolved mainly around the implementation of the project's six Priority Tasks. The JRP made progress on all Priority Tasks as planned and advanced beyond the initially set milestones in some instances.

Priority Task 1: Court Management and Administration

Objective: Strengthen the General Council of the Courts (GCC) in order to consolidate policy making for the judiciary within the judicial branch and ensure efficient management of court information and operations.

The JRP's key tasks to help achieve these objectives in 2003 included:

- GCC organizational reform
- Implement technologies to enhance the capability of the GCC
- Improve caseload data collected from the courts
- Develop a Model Annual Report to disseminate information on the courts
- Continue to develop a workload study for courts and prosecutors.

Activity highlights included:

- Creation of a committee structure that provides for broader and more democratic judicial input to GCC actions.
- Completion of a nationwide workload study that provides solid information to estimate staffing resources and assess work distribution for judges and prosecutors.

Task 1: GCC Organizational Reform

With JRP's support, significant structural changes were made to the GCC in 2002 when the new Law on the Courts came into effect. These changes included the creation of a Judicial Board to select the non-ex officio judicial members of the GCC and the change of the GCC Chair from the Minister of Justice and Home Affairs to the Chief Judge of the Supreme Court. These changes provided for broader, more democratic participation of judicial sector representatives in the GCC membership selection process and strengthened the independence of the judiciary by reducing executive branch influence on the main organization responsible for court administration and policy in Mongolia. While the framework for judicial independence is now largely in place, the change in GCC membership created new challenges. The new structure provides the Mongolian judiciary with the opportunity to define and take ownership of judicial independence in Mongolia. The JRP has worked closely with the new GCC to focus members on the need for transparency and accountability in the courts, developing an understanding for judicial independence, not just from the executive branch, but also from senior judicial officials, and to focus the GCC's deliberations on policy issues rather than routine administrative matters.

Based on information gained during the 2002 study tour, the GCC requested follow-up information from the JRP for the development of Advisory Committees that could be called upon to conduct research and provide advice to the GCC on its work. The JRP provided recommendations (see Attachment A) that were largely accepted by the GCC and resulted in the creation of the following committees: Judicial Selection and Ethics, Judicial Training, Judicial Organization and Legislation, Judicial Budget and Material Support, Judicial Information and Software. These committees were constituted in May 2003 and most have not had the opportunity or reason(s) to be convened at this time except for the Training subcommittee that met to discuss training courses for 2004. Since May of 2003 the GCC has met five times and there have been no legislative enactments in which to respond.

Task 2: Implement technologies to enhance the capability of the GCC

As outlined in more detail under Priority Task 2, the JRP, in coordination with the GTZ, continued to provide support for the adjustment of the Judge 2003 software which became necessary after the significant changes to the Procedural Code and the Law on the Courts. The JRP and GTZ agreed to transfer the copyright and property rights of the computer software *Judge 2003* at no cost to the NCSC. The NCSC has maintained this software and continued to update the software. The software allows the courts to be fully automated and eliminates many of the manual tasks in management of court cases. As a result of the introduction of this software in 26 courts in 2002 and 2003, over 85% of the total caseload in Mongolia is automated since the project began. In addition, these 26 courts are more open and transparent due to the public access areas created in each court that serves the public and litigants.

In order to enhance the operations of the GCC, the JRP and GCC issued a Request for Bids (RFB) to develop a prototype Human Resources software for the GCC and the courts. This system fully automates the human resources records that had been maintained manually. Detailed personnel information for over 900 employees has been standardized and allows the

GCC to easily select employees due raises or promotions. The JRP staff reviewed a demonstration of a Human Resources software package developed by the contractor, Grape City-Mongolia, and was impressed by the ease of use and functionality of the package. This Human Resource software will be distributed to each court which in-turn will complete standardized human resource templates and electronically transmit data to the GCC to update the central data bank. There are numerous reports that have been automated as a result of this software and thus eliminating manual preparation of these reports.

The GCC staff use the Internet to communicate with those courts that have Internet service. This communication is not extensive because in the countryside courts the telephone cost for use of the Internet is billed as a long distance call. Until the infrastructure and the use of fiber optic cable is implemented the usage of the Internet will be limited.

Tasks 3 and 4: Improve caseload data collected from the courts and support for publication of an annual report

The development and publication of an annual report to the public that provides easy to understand and meaningful data to assess the operations and performance of the courts is a new concept for the Mongolian courts. As in any post-Soviet country the publication of such information is a radical change from previous secret Government operations. Developing such a report is a challenge since the data previously collected by the courts do not readily lend themselves to concise public reporting to provide for a new level of openness and accountability that the courts never had before.

While the courts collect an enormous amount of data, the collection methods are not uniformly applied, making the data somewhat questionable. Most data provide little useful management or performance information. For example, the Supreme Court Research Center's suggestions for information to be included in the Mongolia Annual Report consisted mainly of national aggregate numbers with little analysis or graphic presentation. It further appears that the case statistics are "inflated" by including administrative functions as part of "caseloads".[1] JRP staff analyzed the data provided and developed graphs to be included in the "Annual Report" that reflect a more accurate picture of the number of cases per judge in each Aimag. Due to the relatively low number of cases per judge the Research Center is concerned about publishing caseload averages per judge. Publishing this information could trigger negative political and public reactions at a time when judicial resources are inadequate. The JRP will work with the Research Center and the National Office of Statistics to develop a more meaningful and useful set of statistics beginning in 2004.

Task 5 - Continue to develop a workload study for courts and prosecutors

Following last years' intensive preparatory work to conduct a comprehensive weighted workload study for the courts and prosecutors' offices in Mongolia, the working group supported by the JRP[2] completed the development of data collection instruments and instruction materials. As reported before, this effort represents the first time that this

[1] For example: the average number of cases per Aimag judge (appellate level) is 41.6 cases (civil and criminal). By including the cases in the appellate courts by reason of supervisory power, the average is inflated to 185.5 cases per judge. Supervisory power over lower level courts by Aimag Appellate Courts was eliminated by the new Criminal and Civil Procedure Codes in September 2002, but is included in the 2002 statistics. There are several Aimags where the average caseload per Aimag judge is less than 20 cases per year with a several Aimags averaging between 10 and 20 cases per judge year.

[2] The working group consisted of representatives from first instance, appellate and supreme courts, i.e. the GCC, the Supreme Court Research Center, the Capital City Court, and the General Prosecutor's Office.

comprehensive but time-consuming method was used outside the US. The interest and willingness of the Mongolian judiciary and prosecutors' office to actively participate in the study over several months and even take responsibility for significant parts of the data collection and preparatory activities is a tribute to their interest in developing into efficient modern institutions.

In order to ensure proper completion of the data collection instruments by the selected judges and prosecutors, the working group members conducted training courses for all selected participants in the relevant Ulaanbaatar Districts and Aimags[3]. As before, the interest and willingness to participate in this study was high. In two Inter-Soum Courts[4], Chief Judges from outlying courts that had been excluded from the study due to the relatively high cost of involving them traveled to the training site on their own, collected the data collection instruments and information material, and conducted the instructional training at their court themselves. From mid-May until the end of June each participating judge and prosecutor completed a time sheet every day for six weeks. The time sheets were sent to the JRP for review and then to Sant Maral for data entry and analysis. The results of this study provide a solid basis for allocation of judges, court staff, and prosecutors throughout Mongolia. They also provide information on how judges are spending their time. This information can be used by the courts and prosecutors' offices to review their operations for efficiency.

Results and future implications: The results of the study generally support what has been assumed before – trial courts, particularly in the Aimags are adequately staffed, appellate courts in the Aimags are seriously over-staffed. Overall, judges spend significant time on non-case related activities, including administrative tasks. Judges also spend significant amounts of time in training and workshops. Results for prosecutors' do not indicate significant over-staffing but generally show similar trends as in the courts but to a lesser degree (see Attachment B1 and B2).

The workload study results were presented to the GCC, the Supreme Court and the General Prosecutor's Council meetings. The results naturally created concerns and requests for more clarification, which was provided. The Supreme Court requested a repeat of the study since the judges had, against the instructions provided, delegated the completion of the data collection instruments to their assistants. Still, overall the results triggered the envisioned reaction – the general acceptance that sufficient numbers of judges and prosecutors are currently and in the near future available to handle the cases reaching Mongolia's courts, and the recognition that court and prosecutorial operations need to be reviewed for efficiency.

Based on the results of the workload study the GCC issued a Resolution that assigned the duty 1) to adjust the workload study methodology by perfecting the indicators to Mongolian circumstances; 2) to review the administrative duties of judges and develop management recommendations; 3) to analyze the results of the 2003 workload study and develop the budget and recommendations for rational allocation of courts and rotation of judges with the budget estimates for presentation to the GCC in February 2004; 4) to develop and submit the draft amendments to the Law on Courts regulating a flexible approach to the rotation of judges of same instances and to the Civil and Criminal Procedure Codes with regard to the

[3] Selenge, Orhon, Huvsugul, Zavhan, Bayan-Ulgii, Dornod, Suhebaatar, Umnugobi and Aimags and the Chingeltei, Suhebaatar, Bayanzurh and Songinohairhan UB District Courts in addition to the Supreme and Capital City Courts for judges; Uvurhangai, Bayanhongor, Gobi-Altai, Huvsugul, Zavhan, Orhon, Selenge, Dornod, Hentii and Dornogobi Aimags and the Songinohairhan, Bayanzurh and Suhebaatar UB District Prosecutor's Office in addition to Capital City Prosecutor's Office and the Transportation Prosecutor's Office for prosecutors.

[4] Zamiin Uud Inter-Soum Court in Dornogobi Aimag and the Zuunharaa Inter-Soum Court in Selenge Aimag

participation of citizen's representatives and cases to be considered by judicial panels to the GCC Office and the Supreme Court Research Center. The General Prosecutor's Office decided to further study the results and develop recommendations for change, after conferring with the JRP, at the end of the year. Still, the results of the workload study did not have an impact on the previous decision confirmed by the Ih Hural to approve the employment of additional 76 judges to handle administrative cases after the new administrative courts come into effect by July 1, 2004.

Considering the politically sensitive nature of the results of the workload study their overall positive consideration is remarkable and promising. Ideally the study results inform allocation of judicial and prosecutorial positions for the coming year. Since the budget situation for the courts and prosecutor's offices are so dire this would be advisable but may not be practical under the current political situation. If the study results are used as the GCC Resolution proposes, it will be a significant outcome. The JRP will track the use of the workload study results and follow-up with broader distribution of the study reports and communication about the implications of the study in the coming year. Representatives of the Supreme Court Research Center and the GPO indicated that the methodology applied is considered setting a standard for developing staffing information and will be adopted as a standard methodology in the future. If this happens this will be an exemplary result of transferring skills to the local stakeholders. The JRP will be available to assist in these efforts in the future if needed.

Priority Task 2: Case Management

Objective: Establish and implement high standards of efficiency in the judicial process and developing information for planning and management purposes to promote transparency and accountability and strengthen judicial institutions to ensure their independence.

The key tasks outlined the 2003 Workplan are:

- Implementation of case management systems to additional courts.
- Training on the case management systems.
- Improved records management.
- Evaluation of electronic recording of court proceedings in three pilot courts.
- Strengthening judicial independence

The JRP has taken a holistic approach and worked with the prosecutors' offices as well as the courts. The courts can achieve greater efficiency and effectiveness if the prime consumer of their services works with compatible software.

Activity highlights included:

- Automation of 85% of the caseload of Mongolia's courts
- Conducting a national conference that brought together all Chief Judges and Court Administrators to learn about and discuss major changes Mongolia's courts are facing and their implications for judicial independence.

Task 1: Implementation of case management systems to additional courts and prosecutors' offices

In order to ensure that courts included in the automation process are prepared and committed to not only appropriate use and up-keep of the equipment provided but also apply all of the software features as envisioned, the JRP developed criteria by which courts would qualify for consideration for being automated. The GCC passed a Resolution requiring that each court sign an Agreement to comply with specific provisions mandated by the JRP and the GCC. The most notable provisions were: (1) the establishment of public information centers, (2) the use of the random assignment of cases to judges as a function of the computer software, and (3) sufficient funding to insure that each system would be sustained and maintained. The cumulative results of automation in 2003 effected 27 individual courts, 166 judges and approximately 150 judicial staff. As a result, over 85% of the total Mongolia court caseload has been automated by the end of 2003. All eight of the Ulaanbaatar District Courts, the Capital City Court, and twenty seven Aimag, Soum and Inter-Soum Courts have now been automated.[5]

Each of these courts received on-site training on general computer concepts and the use and application of the software, *Judge 2003*. Individuals were selected from each court to receive more extensive training so that they could serve as trainers within their respective courts.

In addition, the court in Dalandzadgad (Umnugobi Aimag) had been utilizing older equipment that had previously been used in Songinohairhan District Court for two years. This equipment was transferred from the Umnugobi Aimag Court to the Suhebaatar Aimag Court, automating an additional Aimag at little cost to the JRP. This was an excellent example of recycling computer equipment where feasible and expanding automation to other courts.

As detailed in Priority Task 6, the Special Investigative Unit, reporting to the Prosecutor General was automated by the JRP. This office is responsible for investigating crimes by justice sector officials.

In order to adjust the software in accordance with changes to the law, staff met with the *Judge 2003* User's Committee, which is composed of judges and court staff, to incorporate the remaining September 1, 2002 law changes to *Judge 2003*. The JRP staff documented the needed changes and contracted with a programmer to complete these changes. The User's Committee also recommended specific changes to the software to make the system more user friendly and incorporate additional functionality into the software.

In October 2003, the GTZ and the JRP jointly contracted to develop computer software for the prosecutors' offices. This software is necessary to inter-connect the prosecutors' offices and the courts for the transfer of data. The prosecutors' office originates nearly half of the courts' cases and an inter-connection will prevent duplicative data entry and potential errors. It is planned that the software will be tested in several pilot prosecutor sites prior to a general release to all prosecutors' offices. This contract represents a $11,000 cost sharing on behalf of the GTZ. It is anticipated that the contractor will complete all modules by November 1, 2003. The General Prosecutor's Office has appointed a "User's Committee" to work with the contractor and the JRP to assure compatibility between the courts and the prosecutors' offices.

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[5] The following courts and Aimags were automated in 2003:
Ulaanbaatar District Courts (8): Bayangol, Bayanzurh, Suhebaatar, Songinohairhan, Han-Uul, Chingeltei, Nalaih, Baganuur; *Aimag and Soum Courts* (27): Bulgan (2); Dornod (3); Dornogobi (3); Orhon (2); Uvurhangai (3); Umnugobi (2); Selenge (4); Tuv (3) Hentii (3) Suhebaatar (2)

Results and future implications: Earlier in the year, the District Courts in Ulaanbaatar and the Tuv Aimag and Soum Courts were visited to assess and observe the usage of computer equipment provided to these courts in mid January. The intent of these visits was to observe and evaluate the progress of these courts in meeting automation criteria. These criteria were related to: training in basic computer concepts, training for judges on *Judge 2003,* progress in establishing Public Access areas and, appointment and training of systems administrators.

Task 2: Training on the Automated Case Management System

Adequate training on the automated case management system is key to ensuring that the courts reap the full benefits of the system. The JRP has applied a multi-pronged approach to providing instruction for the judges and courts staff that is sustainable in the long run.

First, the JRP and Capital City Court (CCC) shared the cost of the creation of a judicial training facility at the CCC to provide direct training to court staff in computer basics, systems administration and *Judge 2003* software. The CCC uses the training facility for training of staff in the eight District Courts in Ulaanbaatar as well as its own staff. The JRP uses the training facility to instruct Aimag and Soum court staff in computer basics and *Judge 2003* software.

Second, the JRP worked with the National Legal Center (NLC) to provide Pre-Installation Training. The (NLC) has responsibility for the training of all judges and prosecutors. In order to expand the capabilities of the NLC to provide computer training and legal research for judges and prosecutors, the JRP loaned computer equipment to the NLC. The NLC agreed to provide three days in general computer concepts training and case management during which JRP staff conducted a three hour program on case-flow management principles and concepts.

The NLC and JRP jointly scheduled judges and staffs to participate in several training sessions in computer basics and case management as courts were scheduled for automation in 2003.

Third, for Post-Installation Training, the JRP and GTZ conducted two training sessions for the system administrators from the UB District Courts and Capital City Court (CCC). This training was conducted in the JRP/CCC training facility. The purpose of this training is to qualify local court staff as systems administrators for their local area networks (LANs). In addition, as major system problems arise the JRP technical staff can better communicate corrective procedures over the telephone.

The JRP uses both the JRP/CCC training facility and the NLC facility to conduct computer training. If the NLC is offering a "legal course" and time permits, the NLC will also conduct training in computers. This saves travel costs in that judges and staff who are already traveling to UB for legal training can also receive computer training at the same facility.

JRP staff conducts on-site training for the court staff on the use of the case management software *Judge 2003* when computer equipment is installed in each respective court. The courts designate staff to attend more extensive training in computer usage as mentioned above. They in turn train their respective staff when they return to their court. This type of training has been successful and also provides the JRP staff with an experienced person with whom to consult with concerning technical matters.

Task 3: Improved records management

With respect to records management, the JRP distributed records folders to improve records keeping practices, and facilitate retrieval of case records in each Aimag that was automated in 2003. Each court that is provided with automation also receives materials and training on how to improve their records management practices.

Results and future implications: This is one of the most cost effective and efficient practices the JRP has undertaken. And the utility and benefits derived from the use of the file organizers was documented as a great success last year in the Capital City Court. The use of these folders greatly reduces the time to locate the hard-copy record in addition to reducing file storage area. The improvement in finding a record for retrieval purposes and the ease of access of the case records also improve transparency and accountability in the eyes of the public. This activity will be continued in 2004 in that it is a cost effective approach to insure that records are readily available to the public and the litigants.

Task 4: Evaluation of electronic recording of court proceedings in three pilot courts

The JRP installed tape recording equipment in three court rooms[6] and conducted training sessions for pilot court staff in the use and operation of the electronic recording equipment. The training included a "mock trial" in which the participants operated the equipment, completed the transaction logs and verified their minutes using the tape playback option of the equipment.

While there were no difficulties with the technical operation of the equipment, in practice the court staff continued to take detailed hand written minutes and supplement these notes with the tape recording rather than relying solely on the tape to serve as the record and then transcribe from the tape. The staff stated that there was a legal requirement to "take minutes." In reality these minutes are not a verbatim transcript but just notes to supplement a transcript. The definition of "minutes" seems to reflect past practice rather than a true legal requirement.

Results and future implications: In reviewing the use of the electronic recording systems and their application, it is apparent that their use in the same fashion as in most western countries to provide a "verbatim transcript" is not seen as an important reform in Mongolia. The JRP decided against extending the pilot taping system to other courts because the cost cannot be justified in light of the restrictive way the pilot courts use the tape record. The current system of primary reliance on summary "minutes" does not utilize the full benefits that taping might have delivered.

Task 5: Strengthening Judicial Independence

Support for Judicial Independence cuts across all Priority Tasks and is discussed in section C. Within this Priority Task, one of the mechanism the JRP applied to develop a more in-depth understanding of judicial independence in Mongolia was to conduct an *Annual Conference for Chief Judges and Court Administrators.* The JRP staff met with the GCC staff to develop the agenda for the chief judges/court administrators 'conference scheduled for November 2003.

The conference attendance was 94 participants that included each Aimag and Soum Court Chief Judge and all Aimag level Court Administrators. The agenda had two primary themes: (1) definition and discussion on what is judicial independence and, (2) team building – an

[6] Capital City Court (Criminal), Tuv Aimag Soum Court, Songinohairhan District Court (Criminal)

interactive session that had the Chief Judges and Administrators working together to solve exercises and problems. There were open discussions on how to solve budget problems facing the courts and how the courts could better serve the public. The participatory format of the conference allowed each participant to interact with their colleagues from different areas of the country.

In addition, at the request of the GCC, the JRP provided an article on the implications of judicial independence for the occasion of the 10th anniversary of the GCC. This article was published in the GCC's bulletin, which is distributed to all courts and can provide a basis for future discussions to clarify the meaning and implications of judicial independence in Mongolia (see Attachment C).

Results and future implications: Very frank discussions of the problems of the courts resulted and will undoubtedly be continued in future conferences. The confidence of judges in independently addressing the problems of the judiciary augurs well for reducing the hierarchal nature of the judiciary and promoting true independence.

Priority Task 3: Review of the Organization, Structure, Jurisdiction and Responsibility of Justice System Agencies

Objective: Develop improvements to the criminal procedure code and other laws and regulations and working with institutions in the justice sector to implement improved practices that support due process and human rights.

The Workplan for 2003 identifies two activities:

- Assistance to improve coordination of arrest and detention procedures under the new Criminal Procedure Code
- Presenting a seminar on victims' rights.

Highlights included:

- A seminar to clarify organizational and procedural issues related to arrest and detention hearings
- A seminar in victim's rights

Both activities were designed to bring common understanding to these subjects, which have generated differing interpretations among different branches of the justice sector.

Task 1: Cooperation among justice sector officials in the arrest and detention hearing process

Mongolia made a significant step towards improved human rights and international practice when it changed its Criminal Procedure Code and gave the authority to review and authorize arrest and detention decisions to judges. These changes largely followed JRP recommendations. Before September 1, 2002, this power had been with the prosecutors. In order to gain a clear idea of how this change was being implemented and if improved human rights had really resulted from the changes, the COP met with several judges, prosecutors and police officials to get their differing perspectives on the difficulties related to the implementation of the new warrant procedures. These meetings revealed that there were several obvious problems of coordination among the implementing agencies. Prosecutors complained of having to wait for judges, police complained that the prosecutors required them to accompany them to court and wait for judges. There were problems with meeting

deadlines. The prosecutors complained that if they brought a warrant request in during the last hour of the work day, the judge often would tell them to come back the following day. Arrests made on Friday nights were often not heard by a judge until Monday morning.

Interviewees made several suggestions to improve this process, such as developing protocols between judges and prosecutors. Specific times for warrant hearings could be set, or a priority for interruption of less important business for warrant hearings could be set. Ulaanbaatar District Courts recently instituted a system whereby one judge was available on Saturdays to hear arrest warrants. The use of a rotating mobile phone and the assignment of a rotating judge in Inter-Soum Courts and supporting regulations might allow the practice to be extended to the whole country, with judges "on call" all weekend.

One important but still not fully explained result of the change in law is the 30% decrease in the number of arrests since the new Criminal Procedure Code was instituted. Most observers pointed to improved human rights, as people were no longer arrested in order to resolve civil disputes, primarily unpaid debts. Police complained that the new distinction between inquiry officers and investigators means that lone police officers in Soums are not allowed to handle both kinds of crime. There exists the possibility that criminals who should be arrested are now allowed to go free because of unintended consequences of certain provisions of the new law or an inability to function under the new Code. This requires further examination. Whatever the reason, if there is a perception that crime is worsening, there could be a backlash against the new laws.

The JRP assisted the NLC in conducting research on the implementation of the new provisions of the Criminal Procedure Code in preparation for the JRP's workshop on this issue. The NLC surveyed all judges and prosecutors on the implementation of the new Code and the problems they have encountered with a mostly open-ended survey instrument.

The JRP invited key prosecutors, judges, investigators and representatives of the Human Rights Commission and HURISTMON/UNDP to a meeting which resulted in an agreement to take specific steps to improve implementation of the provisions of the new Criminal Procedure Code on arrest and detention. These steps include a commitment by the Supreme Court to provide interpretations of specified articles which have been subject to confusion, specific joint orders of the police, prosecutors and the Supreme Court to improve coordinated implementation of arrest and detention procedures, a recommendation for a common handbook on arrest and detention for all judicial institutions, and suggestions for amendments to the Code where necessary. These recommendations have the agreement of all stakeholders and should result in reduced human rights violations and inefficiencies in the criminal justice system.

Results and future implications: The JRP is preparing a summary of the workshop's findings and intends to proceed on implementation in the 2004 Workplan. The Supreme Court is preparing an interpretation of a key article. The Legal Standing Committee will conduct hearings on the implementation of the Criminal and Criminal Procedure Codes in the 2003 fall session and the results of the survey and the workshop will be used to evaluating the need for amendments to the Codes or new regulations and protocols.

Task 2: Victims' Rights Seminar

The JRP worked with Soros Foundation to present a Victims' Rights workshop for Mongolian judges and prosecutors on April 24. Members of the press and NGO representatives also attended. Soros Foundation brought and international expert, Prof. Waller to Mongolia to

work on the draft law on victims' rights and to work with the police on Soros' community policing initiative. Prof. Waller focused his presentation on the UN Resolution on Victims' Rights and the development of international "best practices". The JRP also recruited Judge Munhtuul of the Capital City Court to write a brief description of the current state of victims' rights under Mongolian law. The participants were representatives from various justice sector agencies and relevant NGOs selected for their interest in the subject, particularly in examples for funding victims' compensation funds.

The JRP prepared a presentation on the "Role of Prosecutors and Victims' Rights" which was made available at the seminar and later published in the Prosecutors magazine (see Attachment D)

In addition, the JRP facilitated research for the Ministry of Justice and Home Affairs (MoJHA), Legal Policy Department on legal issues relating to compensation for victims.

Results and future implications: The workshop resulted in a common understanding among prosecutors and judges of the victim's rights issues which are being raised by the Police, through the community policing initiative sponsored by the Soros Foundation and the MoJHA which is developing a victims' compensation law. This common understanding should result in better implementation of reforms in this area.

Priority Task 4: Training and Continuing Education for Legal Professionals

Objective: Build human capacity in all branches of the legal profession so that judges, advocates and prosecutors are able to effectively exercise independent informed professional judgment in their work.

The activities identified for this Priority Task in the 2003 Workplan are:

- Provision of Training of Trainers (ToT) courses
- Develop and begin implementing a continuing education curriculum for judges
- Implement Continuing Legal Education (CLE) courses for judges and other lawyers
- Assist in establishment of the NLC
- Develop written educational materials
- Public Education.

Activity highlights included:

- The development of a sustainable pool of trainers for CLE courses
- The development of sustainable CLE courses to be conducted in the Aimags
- The creation of an action plan for the NLC
- The launch of a successful multi-media public education campaign

Task 1: Provide Training of Trainers Courses

One of the keys to sustainability of CLE in Mongolia is establishment of a corps of well-qualified indigenous CLE trainers. The JRP has therefore devoted substantial time and resources to build the capacity of Mongolian CLE trainers. Following introductory courses conducted in 2002, the JRP presented two advanced ToTs incorporating Mongolian adult education experts. The JRP recruited two PhD lecturers from the Psychology Department of the National University who teach pedagogy. Integrating local adult education experts into the teacher-training faculty ensures that the NLC can present its own ToTs in the future when

new trainers are needed. Other TOT courses for special training efforts, such as the workload study, were also conducted.

Results and future implications: As a result of these activities, a cadre of at least eleven well qualified CLE trainers stands ready to continue CLE efforts in Mongolia and continue to build a corps of trainers in the future. By 2005, the NLC should be able to present ToTs as needed without donor assistance.

Task 2: Development of a Continuing Education Curriculum for Judges

In order to sustain judicial CLE, the NLC, designated by Parliament as the main CLE provider, and the GCC, (the administrative office of the courts which has its own CLE courses for judges), need a cohesive, organized judicial education curriculum outlining what kind of training judges need at entry, intermediate, and advanced experience levels. To assist in developing this curriculum, the JRP engaged an international expert, Charles Ericksen as a consultant.

The consultant provided curriculum development background material and, during his visit to Mongolia, met with Dr. Mendsaikhan, Training Manager of the Center [Head of the NLC Training Center], and all five members of the NLC Judicial Education Sub-Committee to lay the groundwork for a comprehensive but feasible curriculum. He explained the need for and importance of a strategic plan for CLE to ensure the successful operation of the NLC and assisted the NLC staff in outlining the core elements of a strategic plan for CLE in Mongolia. Based on his recommendation summarized in a report submitted to the NLC (see Attachment E), focus groups to determine judges' perspective on their needs were held. The results of these focus group meetings are being incorporated into the judicial curriculum currently being developed.

Results and future implications: As a result of these activities, the NLC leadership, once convinced by the study tour (see below), has the skills to develop a workable strategic plan that considers the needs of the target training group and a curriculum that responds to the real training needs of judges at various stages of their careers. By following the strategic plan and delivering the curriculum, the NLC will be able to sustain its CLE effort.

Task 3: Implementation of CLE Courses for Judges and Other Lawyers

As one of the mechanism to provide for sustainability of CLE courses, the JRP conducted two regional update training courses for three representatives from each of the 21 Aimags who will then teach local courses to update judges, prosecutors and advocates from their region on the topics of the JRP's 2002 Aimag courses with new course materials drafted in late spring 2003. These ToT courses provided the participants with information to enhance their teaching skills, develop and conduct training courses as well as the substance to be covered during these follow-up training sessions. The substance matter of the course to be taught in the Aimags focuses on updates to Criminal Code and Criminal Procedures Code material, as well as advocacy skills and ethics. The JRP will provide the NLC with course materials when the NLC presents similar update courses in UB.

The project was implemented in cooperation with the GCC, which oversaw presentation of local courses in all the Aimags and shared the costs by providing facilities and travel costs for the Aimag judges. JRP trainers or staff monitored some of the courses to ensure quality control.

In addition, the JRP assisted the NLC in presenting direct training courses for judges and lawyers in Ulaanbaatar on these substantive topics, using the JRP trainers and course materials. This cooperative approach, with the NLC and the GCC encourages sustainability of CLE in Mongolia at both the national and local level.

In addition, following a request from Mongolian stakeholders for more training on trial advocacy and domestic violence law, the JRP supported the development of a training tape on how to try a domestic violence case. The JRP solicited three bids for production of a video and awarded the contract to a NGO with which it had a positive prior work history. The JRP will shoot a mock trial in November and expects to complete the product by the end of December. The finished tape will be distributed to courts, prosecutors, the Advocates Association so that all branches of the profession can benefit.

Results and future implications: By November 14, 20 of 21 of the Aimags had successfully completed their update courses. The final Aimag is expected to do its course by the end of 2003. This demonstrates that successful training can be presented at the local level. In order to assist the NLC and GCC in sustaining Aimag level training, the JRP will continue to build capacity in Aimag trainers

The DV video will raise awareness of the prosecutors and courts of the importance of trying DV cases *before* they become murder cases and improve general trial skills, as well as train prosecutors, advocates and judges on how to try DV cases.

Results from a JRP and GTZ jointly solicited post-course evaluation of the long-term effectiveness of their 2002 courses were very encouraging. The 2002 courses were still rated highly for their usefulness. The usefulness of the course materials after the program ended was rated particularly high. Out of 499 respondents, 46.5% used the materials daily and 31% weekly. Equally important, 62% of the respondents said their daily job performance had changed, and almost 25% said it had changed weekly based on what they learned in the courses. This was confirmed by respondents from the other branches of the legal profession, 84.5% said that the job performance in the other branches had changed. These results are encouraging since they confirm that the courses had long-term effects. The detailed results of the evaluation can be found in Attachment F.

Task 4: Support the development of the National Legal Center (NLC)

In addition to the efforts to assist the NLC in developing CLE curricula, the JRP conducted a study tour to the US to build the capacities of key staff of the NLC, its Director, Dr. Amarsanaa, and the Head of the NLC Training Center, Dr. Mendsaikhan.

The study tour was designed to expose these key staff to all elements of organizations that provide CLE and the requirements for developing and operating such institutions. The JRP's Legal Training Specialist accompanied both to set the learned and observed information into context. Specifically, they attended the annual meeting of the Association for Continuing Legal Education (ACLEA). There they participated in a "Boot Camp" for new CLE administrators and a range of special topic sessions. In addition to the formal conference program, they met with other conference participants who are CLE experts, providing them with further opportunities to learn and develop a professional network.

After the ACLEA conference they visited California Judicial Education and Research Center (CJER), to learn about the operations of this institution, the bar admission process, and California judicial education programs and publications. Another visit to the Practising Law

Institute (PLI), provided further insight into CLE programming and procedures, including speaker reimbursement policies, distance education, advance planning and time tables, curriculum development, and revenue generation.

A visit to the California Continuing Education of the Bar (Cal CEB) provided an overview of their activities, structure, and planning process. A detailed account of the study tour can be found in Attachment G.

After returning to Mongolia, they drafted a strategic plan for the NLC based on the judicial curriculum consultant's recommendations and the new concepts learned on the study tour. The plan was finalized with JRP assistance.

The JRP further provided the World Bank's Project in charge of building the new NLC facility with comments on the plans for the Center's interior design, particularly related to the design and distribution of training space, and the design of the television studio. The JRP staff emphasized the need for a distance education capacity now and in the future.

Results and future implications: As a result of the study tour both NLC staff members gained significant insight into the many requirements of developing a CLE program and a facility to house such program. They also gained a better understanding of the resources required and a new appreciation for alternative structures to build a sustainable program. NLC staff recognized that the only sustainable approach to providing CLE is through the use of mainly volunteer trainers instead of a large on-staff full-time trainer pool. The immediate result of these activities is the development of a strategic plan for the NLC (see Attachment H). The long term results will be tracked over the coming year. Implementation of the plan should ensure sustainability of CLE in Mongolia after donor support ceases.

Task 5: Develop written educational materials

The JRP includes written materials with all its live CLE programming as a key element to sustainable training.[7]

In addition, this year the JRP is finishing publication of manuals on *Company Law* and *Contract Law*. The manuals were drafted last year by Mongolian experts and preliminary copies were distributed to law professors, judges, and lawyers for their comments. During winter and spring 2003, the JRP staff solicited comments for improvements of these manuals. Generally, the reviewers asked for more concrete, practical examples. Integrating these comments, the final manuals will be published by the end of November. The JRP anticipates an initial distribution of 1,000 copies of each manual to the courts, libraries, judges, and lawyers.

Results and future implications: To the extent the JRP engages in direct training, JRP will continue to have course materials. Part of the NLC's mandate is to publish legal books and journals; NLC is also committed to having written materials at all its courses. In the JRP will assist NLC in doing this rather than engage in its own significant publications efforts.

Task 6: Public Education

The JRP worked with its subcontractor PACT to implement a multi-media public education campaign to advance public understanding of the new laws and the role of courts in upholding

[7] All the ToTs included written materials and copies of the audio visual aids. The ToTs for trainers from the Aimags also included substantive materials on the update topics.

individual rights. The content of the public education campaign was developed after intensive discussions with the MoJHA and other stakeholders.

The activities included:

- *The production of 12 television programs* building on the GTZ's award winning and highly rated "Legal Hour" television program. While the GTZ programs focused on Civil Law issues, the JRP supported programs focused on Criminal Procedure issues. The shows present dramas based on real life situations, where the new rights provided under the Criminal Procedure Code and new court procedures are of importance and interest to the public. The goal of the television drama series is to provide practical knowledge and raise the awareness of Mongolian citizens, in a clear yet entertaining format, so that they can exercise their rights and demand that courts work according to the independent rule of law. These programs attempt to mimic the success of American crime dramas in educating Americans about the "Miranda" rights in the United States. The programs run twice a month on alternate Wednesdays for 12 months. The intervening Wednesdays are the time slot for the Civil Law "Legal Hour" so the public education campaign benefits from an established and loyal audience base.

- Training for 30 journalists conducted by the Liberty Center. Mongolian judges and Mongolian and American reporters experienced in reporting on legal issues were among the faculty. The training built on the basis of prior courses presented by the Zorig Foundation and Hanns-Seidel Foundation. Journalists were also led on a tour of Songinohairhan Court, where it was explained how journalists could use the public access terminal for information about cases. As part of this visit, court personnel were interviewed and the journalists "filed" stories that were critiqued and discussed by a senior American journalist.

- Great Nation NGO conducted a three day training for eleven Public Affairs Officers from the MoJHA, the General Prosecutor's Office and the courts. The participants studied and questioned the nature of public relations, how to write a press release and heard from successful public relations experts, Mongolian and American reporters and Mongolian and American court experts. Developing a Public Relations Master Plan and writing a press release exercises were conducted.

- Great Nation also turned the material for the course into an issue of its newspaper which it distributed at no cost to the JRP.

- The JRP supported the development of informational posters for the Judicial Disciplinary Committee and the Special Investigative Unit to inform the public about their missions and how and when to make a complaint.

- Rural Business News, the most widely circulated publication in Mongolia, produced by the USAID funded Gobi Initiative project, has run 5 articles developed by the MoJHA and the JRP to inform and educate the Mongolian public about the legal reforms. In future JRP is intending to publish articles developed by the Supreme Court Public Affairs Officers or by judges to facilitate the delivery of accurate and based on fact information about the courts to the public.

Results and future implications: The public education efforts have raised the awareness of the general public of the significant issues in the justice sector. The television program has achieved one of the highest ratings on Mongol TV, higher than GTZ's more established Civil

Law program. Reader surveys indicate that Rural Business News readers want more law related articles. Rural Business News is the most widely distributed newspaper in Mongolia. The public opinion survey indicates increased public satisfaction with the courts and this may be in part due to the JRP's public education programs. The success of both the TV program and the articles will hopefully demonstrate to the media that there is a market for accurate well produced content on the justice sector.

Priority Task 5: Establishment of a Professional Bar System

Objective: Improve the competence and status of legal professionals in order to enable them to fulfill their independent roles in the Justice System.

The 2003 Workplan contemplated that the JRP would assist implementation of the new system through two tasks:

- Assist in structuring an admission to the qualification process
- Assist in design of a mandatory CLE requirement and record keeping system

The JRP has had a great deal of influence on the structure of the admissions process, but the law ultimately passed did not include a mandatory CLE requirement, rendering the second task moot.

In support of the first task the JRP provided legislative comments and implementation support

Legislative comments: The existing situation in Mongolia allows anyone who graduates with a baccalaureate degree in law to claim to be a lawyer, appear in court and offer legal advice. The MoJHA drafted new legislation to establish a qualifying examination administered by a qualification council. The JRP submitted written recommendations for revision to proposed legislation that principally suggested that the qualification system apply to non-trial lawyers but that all legal professionals have some retraining and stressed the need for a fair and transparent process.

The JRP's recommendations regarding the transparency and objectiveness of the tests were accepted, but other recommendations were ignored. The revised law creates a national examination, but it is mandatory only for judges, prosecutors, case inquiry officers, investigators, advocates, notaries, and court decision implementing officers. This omits from coverage non-trial lawyers, including corporate in-house counsel, a serious deficiency for an emerging market economy. Anyone with a Mongolian law degree can claim to be a transactional lawyer without having passed any competency examination. After an analysis of the issues and problems, the JRP staff revised the prior recommendations and submitted them directly to Sharavdorj, Chair of the Legal Standing Committee of State Ih Hural. He responded that transactional lawyers would not be included due to opposition from MPs who threatened to vote against any testing requirement.

After over a year, the State Ih Hural passed the law during the last week of May 2003, introducing a national examination for judges, prosecutors, advocates, notaries, police with investigatory powers, and judgment enforcers, but not for non-trial lawyers. Currently serving judges, prosecutors, advocates, notaries, police with investigatory powers, and judgment enforcers will have to pass a test within their institution to retain their positions. From now on, new graduates will have to pass the admission test before they can be hired for such jobs.

Implementation support: Implementation efforts were initially delayed as a result of Presidential vetoes. The vetoes were resolved early in the fall, and a special council within the MoJHA, chaired by the Secretary of State of MoJHA, has begun organization of the new testing and admission system.

The JRP was asked to attend sessions and advise the Committee to implement the new law. The Committee has accepted all of the JRP's suggestions regarding making the test transparent and objective. A multiple choice section will be followed by an essay examination. The traditional interview, which is the source of perceived bias and corruption, will be replaced by a few predetermined pro forma questions. The JRP will provide equipment to automatically grade the multiple choice section. The JRP will work with the Committee to assure secrecy in the creation of the tests, their printing and distribution to testing sites.

Results and future implications: Fair and transparent administration of the new examination will raise the caliber of the branches of the profession tested and ultimately increase public confidence in the judiciary and legal profession. The JRP is further devising a strategy to deal with the failure to include commercial/transactional lawyers in the qualification system. Helping private lawyers to create a voluntary bar association that would promote its own quality standards may be a step that the JRP can take next year to ensure the professional competence of lawyers in Mongolia. The Mongolian Advocates Association has expressed interest in expanding its base to include commercial/transactional lawyers; this is preferable to establishment of a new bar association.

Priority Task 6: Ethics for the Legal Profession

Objective: Improve the ethical behavior of legal professionals to increase public confidence and gain support for their independence.

The 2003 Workplan identified 3 Tasks to be undertaken to advance the ethical behavior of legal professionals:

- **Continued support and training for the Special Investigative Unit reporting to the Prosecutor General**
- Support for the Judicial Disciplinary Committee and Professional Committee
- **Training video on Judicial Ethics**

Highlights include:

- **Training and technical assistance to the Special Investigative Unit and support for enhancing its operational functions.**
- **Support to the Judicial Disciplinary Committee to enhance its operational functions**

Task 1: Assistance to the Special Investigative Unit

As the most concrete step of the Mongolian Government to combat crime and corruption within the justice sector, amendments to the Law of on Prosecutor's Office created a new Special Investigative Unit under the direction of the Prosecutor General. Following initial JRP assessment of the needs of the Special Investigative Unit (SIU), the JRP engaged an expert consultant, Dennis Hawkins, a prosecutor with 13 years experience in anti-corruption work in New York City, to conduct an assessment of the SIU and provide initial training in investigative techniques and technical assistance for the unit's operations.

Dennis Hawkins' report was translated into Mongolian and circulated to the Prosecutor General, the Minister of Justice and Home Affairs, the Chair of the Legal Standing Committee, the Chief Justice of the Supreme Court and the SIU. The report provided a range of recommendations to make the operations of the SIU more efficient and effective. One of the primary findings was that the SIU could not be effective without appropriate jurisdiction and the ability to conduct undercover investigations. The definition of "undercover activities" in Mongolia is very broad, including simply recording the actions of a police officer in public giving out traffic tickets. The limitations that this definition imposes on the Unit's ability to investigate justice sector crimes and corruption could be addressed by amending the law to give the SIU itself undercover power, or assigning a dedicated police unit to work with the Investigative Unit. Such an amendment would immediately raise new issues, because Mongolia's law on undercover investigation itself is troubling. It does not require judicial review for undertaking wiretaps or covert recordings. It does not differentiate for the seriousness of the crime and the level of intrusiveness of the undercover operation. The JRP prepared an assessment of the Law on Undercover Activities and an illustrative table of the types of undercover activity, the approval required for such activity and the level of seriousness of the crime for which such activity is appropriate. This was translated and distributed to the same stakeholders. (For JRP's comment on the Law on Undercover Activities see Attachment I)

The initial assessment and training was followed by a second visit during which initial assessment results were clarified and additional training conducted. Despite limited financial resources the SIU had begun to implement several of the recommendations made during the first visit. The Government did not provide the needed resources to make the SIU fully functional. The GPO borrowed funds from his office's budget to cover SIU salaries and operations and even the space for the unit was made available more than a year after the SIU had been established. Despite these significant financial impediments and the Government's failure to provide support, the SIU continued to implement the JRP's recommendations and has successfully conducted a number of investigations of crimes and corruption within the justice sector. Despite resistance from the police and reluctance of the courts to pursue these cases, the number of cases reported and pursued continues to increase. The JRP provided the unit with an initial set of computers to enable it to track case information and expanded this support to provide every staff member with a computer after the unit finally moved into its new premises.

In order to assist the SIU in raising public awareness about its role and the process involved in making a complaint the JRP designed a public information poster which tells the public how to make a complaint. The poster is being posted in courts, police stations, local Government offices, NGOs and other public venues.

Results and future implications: In its first year, the SIU investigated more crimes committed by justice sector officials than had been completed by the police authorities in the prior 4 years combined. Cases involving 9 judges, 5 prosecutors, 28 investigators, 69 inquirers and 397 ordinary police were investigated and sent to the prosecutor's office for criminal prosecution. Conviction statistics are not available at this time, but this represents a very significant effort to investigate and prosecute crime and corruption in the justice sector and should have a demonstration effect far beyond the numbers of those actually prosecuted. JRP's assistance has had a significant impact on the unit's ability to function successfully. The SIU and the JRP are looking forward to the conviction rate for the cases already turned over for prosecution. Even indictments have a strong warning effect, but a solid record of convictions would certainly get the attention of all justice sector officials and be a significant disincentive to crime and misconduct.

Task 2: Support for the Judicial Disciplinary and Professional Committee

The JRP and its consultant met with the new Judicial Disciplinary Committee and advised it on methodologies to improve its work, especially collecting and auditing the financial disclosure statements of judges. JRP provided four work-stations to the Judicial Disciplinary Committee staff to assist in their investigative activities. This permitted the Committee to prepare hard copy reports and keep case files digitally. The Supreme Court issued an interpretation on the Law on the Courts regarding the work of the Disciplinary Committee clarifying some provisions that will allow it to work more expeditiously.

Similarly as for the SIU, the JRP has created a poster to be posted in all courts and local Government offices that will explain the structure of the Judicial Ethics Committee and inform the public of the grounds and procedures for filing a complaint.

Results and future implications: The Disciplinary Committee has imposed disciplinary sanctions on 17 judges since September 1st, when it was formed. Seven judges have been removed from office. The most common grounds for discipline remain drunkenness which resulted in the removal of 4 judges. "Irresponsibility" usually involving falsifying court records is the second most common grounds for discipline. Seven judges have been reprimanded and 3 have been reduced in rank (pay grade). Complaints from citizens have been the main source of complaints against judges. Fifty six complaints against judge were investigated and found not to merit disciplinary action. It is expected that the poster will heighten public awareness of the Disciplinary Committee and more complaints will be received and acted upon. This will create additional disincentives to misconduct in the judiciary.

Task 3: Judicial Ethics Video

A contract to produce the ethics video was awarded to the Rural Business News Group and a script has been submitted. Production will be completed in the fall and distribution to both courts as a training device accompanied with a work book and to the media as a public education device will be accomplished by the end of 2003.

Additional Activities: Support for Anti-Corruption Efforts

Justice sector ethics and anti-corruption efforts are closely tied together. JRP's work related to ethics has logically been a focus for other organizations to seek advice and support for the slowly beginning anticorruption efforts in Mongolia. In March the COP delivered a report on judicial corruption in Mongolia at the UNDP's Workshop on "The Role of the Executive and Judicial Branches in Combating Corruption". The most significant finding was the drop in the number of bribery convictions in Ulaanbaatar over the last 5 years, to the point that there were no convictions last year.

The Ih Hural is now considering a new draft law on corruption and the JRP has both solicited comments by international experts and prepared its own critique of the draft. The JRP will work with IRI, Soros Foundation and UNDP which are planning to work together to hold public hearings on the anticorruption legislation.

The COP prepared and delivered two speeches at the GTZ Conference celebrating its 8th anniversary of work in Mongolia. The first speech was on the future of judicial reform in Mongolia (Attachment J). The second speech was on judicial corruption in Mongolia (Attachment K). Both speeches are being published by GTZ. The COP's speech on judicial

corruption in Mongolia was followed up with a meeting with N. Lundendorj, a member of the Judicial Disciplinary Committee. The meeting focused on the ability to require that judges file financial disclosure statements with the Disciplinary Committee and giving the Committee the power to investigate and audit such statements.

Results and future implications: As a result of the discussions with the Judicial Disciplinary Committee, the GCC passed a rule requiring judges to make financial disclosures at its October meeting. Public awareness has been heightened and public vigilance is the only safeguard against corruption. The JRP will continue to track anticorruption legislation and focus on anticorruption efforts within the judicial sector.

C. CROSS-CUTTING ISSUES AND ACTIVITIES

Judicial Independence

Judicial Independence is a key aspect of a democratic Government structure, the rule of law and, therefore, an overall objective of the JRP. Almost every activity the JRP engages in is also intended to increase judicial independence in some way.

For example, under Priority Task 1, work to strengthen the General Council of Courts (GCC), the body responsible for judicial sector governance in Mongolia, focused on making the judiciary more independent of the executive branch through adjustments in the legal framework that shifted the responsibility for the judicial sector from the MoJHA to the judiciary, that provided for a more democratic committee structure for making key decisions that impact the judiciary, such as judicial selection, performance measurement, and discipline, and the introduction of automation to provide for more efficient communication among the GCC and the courts, and improved data collection to enhance national level management of the courts as well as data reporting to increase accountability of the courts and improve the confidence of the public in the judiciary.

Under Priority Task 2, improved case management is just one aspect of the JRP's efforts to strengthen court administration in Mongolia. The JRP's achievements in improving case management are a significant part of a strategy to redefine and explain the role of judges in a democratic society to the judiciary and in the public. The workload study confirmed observations that judges did not spend most of their time on the core competencies of judges, i.e. preparing for and hearing cases, studying the law applicable to specific cases and making well reasoned decisions explaining how the law and the facts compel a given result. Rather, many judges see themselves, and are seen by the public as ordinary civil servants engaged in a largely clerical function. Automation and training provided by the JRP are designed to give judges both the ability to devote sufficient time to core judicial activities and to change their image of themselves into independent judicial decision makers. Certain features of the software introduced as part of the automation process further support independent judicial decision making by introducing random case assignment that eliminates undue influences on the selection of judges for certain cases, and providing for case tracking and outcome data that make the courts more transparent and less prone to outside influence.

Under Priority Task 3, the Arrest and Detention workshop was designed in part to make judges more effective in their new role of protecting the civil and human rights of defendants by independently judging the grounds for arrest and detention, a decision that was previously solely in the jurisdiction of the prosecutor. This makes the independence of the judiciary crucial to protecting human rights.

Priority Task 4, is designed to assure that Mongolian legal institutions can provide training that judges and other lawyers need to fulfill their functions in a democratic system. Emphasis is given to involving judges in designing curriculum, teaching courses and setting training requirements as a means of ensuring judicial independence and qualification. The public education component included under this Priority Task contributes to increasing the public's understanding of the role of the judiciary in a democratic society and the importance of judicial independence.

Priority Task 5 is designed to ensure that only qualified professionals can serve as lawyers, prosecutors and judges. Public confidence in the quality of justice system officials is essential if courts are to be independent. A transparent and objective qualification process is essential to public confidence.

Priority Task 6, enhancing ethics, goes to the heart of public confidence in the judiciary. Without improved ethics and effective procedures to detect and punish ethical violations, the judiciary will not earn the public's respect. Without that respect, the executive and legislative branch will feel little restraint on interfering in the judicial process. Corruption is the pinnacle of interference with judicial independence.

Donor Coordination

The JRP successfully coordinated with the donor community active in the legal and justice reform sector through general coordination efforts and topic specific activities.

The JRP held a CLE Forum for approximately 20 stakeholders and donors.[8] Dr. Amarsanaa, Director of the NLC and Dr. Mendsaikhan, Head of the NLC Training Center outlined their planned trainings and publications. The MoJHA announced that it had scaled back a potentially duplicative public education (informal legal education) effort. The World Bank announced the construction schedule for the NLC building. Other donors and Mongolian organizations discussed their training plans. A great deal of information was exchanged and the potential for duplication of efforts was significantly reduced. As a result, more organizations are coordinating their work now than in the past, particularly to attempt to make the NLC capable of providing comprehensive retraining to Mongolian legal professionals. Another donor meeting was organized by the World Bank Judicial & Legal Reform Project which presented the progress of its projects, i.e the NLC building, the creation of a Unified Information System, training of Administrative Judges, refurbishing a building in UB and Darhan for the appellate Administrative Court and the reform of the curriculum of three law schools.

JRP assisted Sam Cooper, the ABA-Asia/State Department-INL representative implementing the ADB/OCED Asia Pacific anti-corruption framework. Mongolia is a signatory to the framework agreement. JRP arranged meetings and briefings to ensure cooperation and avoid duplication of efforts in the anticorruption assistance area. JRP also worked closely with UNDP on the organization of workshops for its Good Governance anticorruption effort.

JRP participated in the HURISTSMON retreat on April 4 for the major donors in the legal field in Mongolia. UNDP, the JRP, GTZ, World Bank, Soros Foundation, Hanns-Seidel Foundation attended. The JRP suggested that all donors combine the legal journals that they

[8] Approximately 20 representatives from the National Legal Center (NLC), the MoJHA, USAID, the Human Rights Commission of Mongolia, GTZ, Hanns-Seidel Foundation, the World Bank, the GPO, the GCC, the Association of Notaries, the Mongolian Women's Lawyers Association and the Supreme Court attended.

sponsor to reduce duplication and improve prospects for sustainability. All donors with the exception of the Hanns-Seidel-Foundation agreed to this proposal.

The JRP initially assisted the Supreme Court publish 2 issues of its journal "Information" which contains Supreme Court Resolutions and decisions, Supreme Court Research Center studies, Professional Committee proceedings, and court information. The JRP has now convinced the Supreme Court to combine its journal with the "Legis" journal sponsored by GTZ and the "Human Rights" journal sponsored by the HURISTMON/UNDP as well as journal "Rule of Law" published by the NLC. A single journal will be more likely to be sustainable on the limited subscription and advertising revenue that can be generated in Mongolia.

The JRP and GTZ have reached an agreement to sponsor a competition for the best written legal opinions by judges. Poorly reasoned and written legal opinions have been identified as a serious problem with the Mongolian judiciary. GTZ has sponsored training aimed directly at writing skills, while all of the JRP and GTZ's training can be said to be aimed at improving legal reasoning skills. Poorly written opinions affect the public's perception of the courts. If the litigants and the public cannot understand the reasoning behind a decision, they are far more likely to believe it is unfair. Opaque decisions allow dishonest judges to deviate from the law in making decisions when they have been bribed. A *de facto* standard of poorly written decisions makes detection of wrongly decided cases impossible. A competition for the best decision can at least establish a standard for well written decisions that does not exist in Mongolia at present. GTZ and the JRP have agreed that prizes will be awarded for the best civil and criminal case decisions of each Aimag, the eight UB District Courts and the Capital City Court. The two winners from each Aimag and from UB courts will enter the national competition. The two winners of the National Competition will participate in a two week study tour in Germany sponsored by GTZ. The JRP and GTZ presented the proposal to the GCC who agreed to formally sponsor the competition.

D. PROGRAM MONITORING, EVALUATION AND PLANNING

Performance Monitoring Plan

The JRP has updated it statistics in its performance Monitoring Plan with the 2002 and partial 2003 statistics from the courts as well as the new Public Opinion Survey and Legal Professional Survey. Following recommendations from the Program Evaluation, the JRP will redesign its Performance Monitoring indicators to make them more responsive to USAID's needs and to more accurately reflect the work of the JRP. The updated PMP with suggestions for changes will be submitted as a separate document.

The public opinion survey conducted as part of the PMP tracked the survey of 2001. A comparison of the two surveys revealed that there were small, but statistically significant changes in public attitudes towards the courts. In general the public trusted the courts more and thought that they were doing a better job. The most significant area where there was deterioration in public attitudes towards the courts was in the perception of political interference in the courts. While the JRP cannot take complete credit for all changes in public perception, the results support the idea that the improvements in transparency due to court administration, and the public education campaign emphasizing the positive changes in the courts have had an impact. Improved public perceptions of the courts can lead to increased public support for the courts independence, which is a necessary counter weight to the

appetite for power of the other branches of government, political parties and wealthy individuals, all of whom continue to be perceived as interfering in the courts.

Program Evaluation

The JRP retained two independent evaluators to assess the achievements of the JRP at its midway point and to make recommendations that will allow JRP to improve its effectiveness. Their primary findings and recommendations are that the JRP has made progress towards all of its goals and that further efforts to change "the hearts and minds" of justice sector officials and the public should be the focus in the following years of the project. Certain organizational changes are recommended to make better use of Mongolian staff with the departure of some of the American experts.

Review of Strategic Plan

The midpoint of the JRP's activities was also the 3rd anniversary of the Strategic Plan for the justice system reform. The JRP, in conjunction with the Legal Standing Committee of the Ih Hural undertook a review of the Strategic Plan involving the stakeholders who participated in the original formulation process. The purpose was to update the Plan, evaluate what had been done and what remained to be done and come to agreements regarding the need to change any aspects of the Plan. The JRP started with meetings with the Legal Standing Committee Chair and other key individuals. All stakeholders were advised of the review process and invited to participate. The JRP developed a list of the changes and legal enactments made to fulfill various sections of the Strategic Plan. A Matrix listing the degree of success in fulfilling each of the tasks in the Strategic Plan was prepared and circulated to the stakeholders. Individual discussions were held with most stakeholder institutions regarding the Matrix. A conference reviewing the progress of the Strategic Plan was held in conjunction with the Legal Standing Committee in June. Additional comments were collected from stakeholders and entered into a Matrix of suggestions which was submitted to the Legal Standing Committee (see Attachment L). The Legal Standing Committee is expected to act on the review of the Strategic Plan in the fall session of the Ih Hural.

E. OUTLOOK

The future implications sections under each priority task indicate where the JRP is aiming to focus its efforts in the coming year.

In addition to focusing more efforts on strengthening judicial independence a few issues stand out that require particular attention next year:

Since inadequate Government funding remained the most significant challenge to the sustainability of the reforms undertaken with the JRP's assistance, the JRP will continue to work with the GCC and General Prosecutor's Office to help create budgets that can be successfully defended in the Ministry of Finance and the Ih Hural. The workload study was in part aimed at providing solid information to make resources more efficient and transparent and ensure that budget requests are more factually grounded. This study, and case averages indicate that particularly Aimag appellate judges have small workloads. This is due primarily to the elimination of some of their functions under the new Criminal Procedure and Civil Procedure Codes. Yet, the Parliament has authorized the appointment of 3 new judges in each Aimag appellate court to handle Administrative Cases. This seems like a significant waste of limited resources. The JRP has and will continue to discuss this with key decision makers.

The Government's willingness to allocate adequate resources to the justice sector will be a test of its commitment to achieve the rule of law. While Mongolia's budget is tight and under strict mandates from international lenders, wasteful spending while vital needs are not met would indicate a lack of serious commitment.

Both Mongolian citizens and foreign investors share the perception that ethical problems and corruption are wide spread in the justice sector. Progress has been made and perceptions of corruption have declined somewhat since 2001. The success of both the Special Investigative Unit and the Judicial Disciplinary Committee are real and impressive. But both agencies have significant weaknesses as outlined before. The new anticorruption law that Parliament is considering may actually give more responsibility to the Special Investigative Unit, without adequate power or resources to fully accomplish even its current mandate. Such a move would have to be viewed as a step back from serious support for anticorruption efforts. The JRP will track the current legislative reforms and work with the judicial sector agencies to build their capacities and gain the needed resources to prevent and combat corruption within this sector. Increasing public awareness of these issues will be one important component in JRP's work.

Political interference in court decisions is one area where public perception worsened since 2001. Moves to exert more political control over the courts and the prosecutor's office have been rumored to be under discussion in Parliament. Courts continue to report that Aimag Governors still try to exert influence on the courts because of their power to fund the legitimate needs of the Aimag courts that are not met by the GCC budget. The JRP will monitor any attempt to subject the justice sector agencies to political control and advocate measures to reduce existing avenues for exerting improper influence. This will be another key test of the Government's commitment to achieve the rule of law.

1. Attachment A.GCC Committees and Task Forces
2. Attachment B1. 2003 WLStudy Results for the Courts,
   Attachment B2. WLStudy Results for the Prosecutor's Offices (Heike will send)
3. Attachment C. Judicial Independence and Democracy
4. Attachment D. Attachment E. "Role of Prosecutors and Victims' Rights"
5. Attachment E. Establishing a Judicial Education Curriculum in Mongolia
6. Attachment F. Post-Course Evaluation Summary
7. Attachment G. CLE Study Tour Report
8. Attachment H. NLC Strategic Plan
9. Attachment I. JRP's Comment on the Law on Undercover Activities
10. Attachment J. The Future of Judicial Reform
11. Attachment K. Issues on Combating Judicial Corruption
12. Attachment L. Strategic Plan Matrix with stakeholders suggestions

General Council of Courts' Advisory Committees

Role and Responsibilities

Advisory Committees provide leadership for the consistent, impartial, independent and accessible administration of justice. The General Council of Courts must be made aware of the issues and concerns that affect the courts and be knowledgeable of the possible solutions and responses to resolve these issues and concerns. The General Council of Courts must seek the assistance of consultant groups to research and address these issues and concerns affecting the court system.

The chair-person of the General Council of Courts (GCC) may appoint advisory committees and special task forces to research and advise the General Council of Courts. These committees and task forces should be comprised of judges, court administrators, attorneys, members of the public and specialists in fields of study to advise the GCC in studying the condition of court business, judicial administration and other activities directly related to the courts. An advisory committee could monitor areas of continuing concerns that affect the court system. Task forces research and make recommendations on how to handle specific projects or proposals.

The advisory committees and task forces make recommendations to the GCC. It is the responsibility of the GCC to adopt and implement any or all of the recommendations. The GCC staff shall serve as liaison and support staff to the committees and task forces and report directly to the Executive Secretary of the GCC.

Examples of Advisory Committees and Task Forces:

Council of Chief Judges

Monitors issues related to access to the judicial system, fairness and transparency. Reviews rules, forms, studies and recommendations to the GCC related to the administration of the courts including legislative issues that the GCC may need to address.

Committee of Court Administrators

This committee would strengthen the court administrators' access and participation in the GCC decision making process and the impact on budgetary and administrative areas affecting the courts. The committee functions would also improve the communications between the GCC and the first instance and aimag courts in administrative matters.

Court Technology Committee

This committee would promote and coordinate the application of technology to the work of the courts. The committee would propose rules and standards to ensure compatibility and sustainability of technology efforts in the court system. The committee would monitor compliance with funding agencies that all equipment and software is being utilized in a prescribed manner as directed by the GCC.

Judicial Branch Budget Advisory Committee

This committee would advise the GCC and the Executive Secretary on the preparation, development, implementation and advocacy of the judicial budget. They would also prepare impact statements on governmental fiscal policies and the impact of such policies on the court system.

Task Force on Court Facilities

This task force would assess and prioritize the construction and repair of court facilities and report its recommendations to the GCC.

Task Force on Court Procedures and Policies

This task force would assess the impact of GCC policy decisions and legislation that affect the manner in which court procedures are conducted. The chair-person of the GCC would assign specific procedures and policies that require implementation bylaw and or policy and determine the impact of such polices and procedures in the adjudication of court cases.

2003 WORKLOAD STUDY RESULTS FOR THE COURTS IN MONGOLIA[1]

Introduction

Beginning in 2002, the USAID funded Judicial Reform Program (JRP), in cooperation with the General Council of Courts (GCC), the Supreme Court Research Center, the Capital City Court (CCC), and the Prosecutor General's Office (PGO) established a working group to develop and conduct a weighted workload study to identify the staffing needs for the courts and prosecutors' offices throughout Mongolia. Using material from similar studies conducted in the US, the working group, supported by JRP staff, developed data collection instruments specific to the Mongolian situation to gather the needed information. The working group also solicited extensive input from judges and prosecutors of all instance courts in refining the data collection instruments and the data collection methodology to ensure that the process reflected the Mongolian needs.

From mid May to the end of June 2003, judges and prosecutors from a statistically representative number of courts and prosecutors' offices on all instance levels participated in this study and recorded five types of information each day during a six week data collection period. The five types of information included:

1) The type of cases being worked on;
2) The type of non-case specific work conducted;
3) The type case related and non case related activity involved;
4) The amount of time each activity takes;
5) If the activity required additional time as a result of special complexity of the case.

Conducting such a study is essential to gaining a true image of the work of judges and prosecutors to identify what the staffing needs are. Traditionally only information related to the type of cases judges and prosecutors handle in a year is available to estimate staffing needs. The shortcoming of such approach is that it does not reflect the full workload judges and prosecutors have to deal with. Different from the caseload, the workload describes the variety and complexity of the work done by judges and prosecutors. It recognizes that their work includes many tasks not directly related to handling a case but also other work activities, such as general administrative tasks, participating in training, advising citizens on crime prevention, supervising staff, etc. It also recognizes that different types of cases and different processing steps require different staff time.

The methodology used for this study, sample size, and participation detail is described in more detail in a separate document.

In order to ensure proper implementation of the study significant effort was taken to develop data collection instruments that are easy to complete and that the judges and prosecutors who participate had all the information needed and are well prepared to

[1] This report was written by Dr. Heike Gramckow as part of the USAID funded RP project. The opinions voiced in this report are those of the author and do not represent official USAID policy.

complete the time study logs correctly. For over a year a Mongolian working group consisting of representatives of the GCC, the CCC, the Supreme Court Research Center and the PGO developed the time study logs and a users guide that explained how to complete the forms. The working group members also tested the material and developed and conducted training for all study participants on how to fill out the forms.

In order to ensure that all forms were completed and collected each participating court and prosecutor's office designated one person to collect the time logs each week and send them to the JRP office in UB. The time logs were then delivered to the Mongolian company Sant Maral, where the data were entered and analyzed.

Finally, for six weeks, from mid May to the end of June 2003, judges in 9 Aimags, and six districts in UB, including all appellate levels and the Supreme Court participated in the study. Prosecutors from 10 Aimags, 3 UB districts and the city and transportation divisions participated. The number of participants was calculated to ensure a statistically representative sample of all judges and prosecutors and the selection of Aimags and districts followed suggestions of the Supreme Court, GCC, and GPO. A total of 156 judges and 143 prosecutors participated.

The tables presented in the annex outline the detailed results of this study. Three types of tables are presented:

1. *Court workload and staffing needs*: Tables that show the time needed to process specific types of cases, other workload, and the resulting staffing needs
2. *Case processing time comparison*: Tables that compare the average time to process specific types of cases among all participating Aimags and UB districts
3. *Non-case specific work:* Tables that show the type and minutes reported by the participating courts spent on non-case specific work

The first tables provide guidance for the staffing of these courts, the second tables provide guidance for comparing processing times for specific case types to review efficient case processing, and the third table provides information about time judges spend on work that is not focusing on processing an individual case and allows for review of issues related to the management of the courts.

The results of the study are presented below.

Results for the courts

The results for the courts are available for each participating Aimag and court level separately. Considering the significant differences of the workload, local requirements and working conditions, the results should generally only be compared among courts of the same court level, among Aimag courts and among UB courts but results from UB courts should not be compared to results from Aimag courts. At the same time, results from all courts provide information to identify how their operations can be improved to be more efficient and cost-effective.

The results of this study raise a number of questions about how judges are spending their time and how well they are organized and managed to handle their work efficiently. The sections below will discuss these issues generally for all trial courts in the Aimags and in UB as well as for Aimag appellate courts and the CCC and Supreme Court. While most of the results have logical explanations that hold across similar courts, others may be specific to an individual Aimag or court. Therefore, all results should be shared with the courts that participated to provide further explanations for individual variations.

2. Court workload and staffing needs

The workload and staffing needs tables present information for each participating court by case type and express the following:

A. *Minutes recorded*: The total number of minutes recorded by the judges at the reporting court spent on processing a specific type of cases

B. *Number of dispositions:* The total number of dispositions (i.e. decisions that terminated the case) recorded by judges from the reporting court made for a specific type of cases

C. *Case weight or mean number of minutes recorded:* By dividing column A by column B we can calculate the mean number of minutes judges at a reporting court need for processing a specific type of case.

D. *Number of cases handled:* The number of cases handled by the reporting court during 2002. A case is defined as one case = one defendant. This definition of what a case is differs from what is generally used by the Supreme Court Research Center and others, i.e. a case is otherwise defined by the case processing number assigned by the court and can include more than one defendant. Since this does not account for the potential increase in workload resulting from multiple defendant case, the one case = one defendant calculation needed here is more accurate for assessing court workloads.

E. *Number of hours needed to process all cases of this type:* By dividing column C by 60 and multiplying it by column D we can calculate the number of hours needed to process each type of cases per year.

F. *Number of judges needed to process this type of case:* According to information provided by the GCC judges in Mongolia work an average of 211 days per year (= annual work days – holidays, vacation and average sick days). By dividing column E by 8 and 211 we can calculate how many judges are needed to process the cases of this type annually.

G. *Non-case related activities*: In order to estimate how much time judges are spending on non-case specific work per year, the minutes reported during the six week study period were multiplied to reflect this work over a the 52 weeks annually. The resulting amount of total minutes needed was then again divided by 211 to identify how many judges would be needed per year to handle the non-case related work.

Rural trial court summary results: As indicated in the summary results table for all rural trial courts in the Aimags that participated in this study, the current number of judges for

these courts is sufficient to handle the current caseload. This result may surprise some of the courts that experienced a significantly increased caseload after the reorganization of the courts after the new law on the courts and procedural codes came into effect in 2002. The data tables for each Aimag show that a few of these rural trial level courts (i.e. Dornogobi-Zamin Uud, Zavkhna Aimag, Umugobi, Selenge, Huvsgul, Orkhon) may need one or two more judges to handle the increased caseload. At the same time, the case processing comparison and the information available on the time judges spent on non-case specific time indicate significant difference in the individual court's ability to effectively process cases and to manage workloads. These data indicate that some rural trial court judges spent significant time on non-case specific work. These other pieces of information indicate that improvements in court management could alleviate most of the work pressures experienced by the rural trial courts. Also, as further discussed in the future judges' need projection section, changes that will come into effect after June 2004 when the new administrative code comes into effect will shift some of the current caseload to the appellate level, alleviating the workload of the trial courts.

The summary results for rural trial courts are presented in annex A.

UB trial court summary results: The results for the UB trial courts generally mirror the results of the rural trial courts – they generally have a sufficient number of judges. Some differences appear among the districts, for example, it seems that the Songonkhairkhan and Chingeltei districts need a few more judges while the Sukhbaatar district needs less.

The summary results for UB trial courts are presented in annex B.

Rural appellate court summary results: The summary results for the rural appellate courts indicate that they are seriously over-staffed. This becomes even more evident when focusing on the time needed for case processing only. Most of the rural appellate courts spend significantly more time on non-case specific work than on processing cases. Some spent more than double the time on non-case specific work than on processing cases. As discussed in more detail in the section on non-case specific work, much of this non-case specific time is spent on legitimate court activities. Still, this unbalanced work allocation is an expression of inefficient court management practices. The workload changes resulting from the administrative code coming into effect in the summer of 2004 will not make much of a difference for most of the rural appellate courts. Caseload data provided by the Supreme Court Research Center indicate that only a few of the rural appellate courts will experience more than a slight increase in administrative cases and that even these increases do not offset the currently significant under use of resources in the rural appellate courts. See annex C for the summary results for the rural appellate courts and annex D for the caseload change projections related to the introduction of the administrative code.

CCC summary results: The summary results indicate that the CCC has a sufficient, even slightly too high, number of judges to handle the current caseload. The data also indicate that judges here spent a significant amount of time on non-case specific time. The mandate of the CCC may require that judges spend significant time on activities that are not specifically related to an individual case, still, the fact that non-case specific time exceeds by more than 30% the time needed for processing cases indicates a need to review time

management and allocation of responsibilities. This court handles the majority of all appeals in Mongolia but is comfortably staffed. This further supports the need to seriously review the staffing of the rural appellate courts. Since the projected caseload changes resulting from the administrative code next year are likely to have a significant impact on the CCC, it may need a slight increase in staff next year to handle the additional caseload.

Supreme Court summary results:

The summary results for the Supreme Court indicate a low workload. Even considering the fact that Supreme Court judges spend about 45% of their time on non-case specific work, the data provided by the judges themselves indicate that they are underutilized. Any increase in appeals resulting from administrative cases after the administrative code comes into effect in 2004 should be easily handled with the current staffing level. At the same time, the non-case specific data indicate a significant need for reviewing current processing and management approaches to improve efficiency and effectiveness of the Supreme Court.

3. Case processing time comparison

Comparison of average times the participating courts needed for processing specific case types provides information about the efficiency of the courts. The mean case processing times are presented in the tables in annex E. In comparing these data it is important to consider the different situation and staffing of the courts and the fact that even cases of the same type will differ in how much time they consume depending on the complexity of the legal issues and the number of people involved in a case. In addition, courts that are handling certain types of cases on a regular basis are generally faster since they are more familiar with the legal issues involved than a court that handles a certain type of case only once in a while. For example, the case processing times for the rural courts are generally longer than in UB. Since other factors, such as time needed to travel to different locations, are already excluded from the pure case processing time and counted under other work, the best explanation for this slower pace may be in the fact that these courts do not have the advantage efficient processing due to a combination of automation of the UB courts and a higher frequency of processing the same type of cases. It could also be explained by a slower pace of the rural environment in general. Considering the different situation in UB and in the Aimags, comparison of processing times should only be made among the Aimag courts and among the UB courts. Even then the comparison needs to be carefully developed. There may be good explanations why a particular court seems to be slower in handling a certain type of case (i.e. handling a very complex case with many defendants will results in a slower pace). However, if a court is slower in handling most or all case types then the likelihood that this is a result of inefficient organization and management of the work is high.

4. Non-case specific work

An analysis of the non-case specific time reported by the judges will provide many opportunities to review the type of work judges are involved in and reconsider responsibilities and work assignment to increase efficiency in the courts. Non-case specific work generally relates to activities that are important for preparing for case work in general

and also for the operations of the courts overall. The range of non-case related work by the courts is shown in the tables provided in Annex F. While the type of this other work and the amount of time spent on them differs significantly among all courts and should be studied in more detail with each participating court, some general observations can be made:

- The trial courts in the Aimags, with a few exceptions, report significantly more time spent on non-case related work than their UB counterparts. Some of this time can be explained with the need to travel to different locations. These courts also appear to be spending significantly more time on administrative tasks than the trial court judges in UB.
- While all judges report spending a significant amount of time in attending training and seminars, the courts in UB report particularly high numbers of hours being spent in training and seminars.
- The appellate courts in the Aimags but also the CCC and the Supreme Court report spending more time on non-case specific work than on processing cases. While their mandates may require them to engage in more non-case related work than trial courts, i.e. as a result of having to draft guiding decisions and public relations work, this significant discrepancy is difficult to explain. It appears as if a review of the non-case related work activities could provide new ideas for structuring this work in a more efficient way.

4. Future court staffing needs

The administrative code coming into effect next summer will have some impact on the workload of all courts. The following projections can be made based on currently available information:

1. The matters that fall under the administrative law are currently to a large extent already covered by the civil code and other civil legislation, such as the land privatization law. As a result many matters later to be handled under the administrative code are not completely new or different matters, but matters that are currently handled under the civil code. Further, the shift in caseload will be from the trial courts to the appellate courts. This is likely to relieve any caseload stress trial courts may currently experience.

2. Using caseload data provided by the Supreme Court Research Center, the number of cases that fall into the categories of potential administrative cases can be used to project which appellate courts will experience what amount of increase in caseload. Using these data the only appellate court that is likely to experience a significant increase in cases is the CCC. The appellate courts in Dornod, Selenge, and Orhon too will feel this impact but to a lesser extent. Still, it needs to be considered that these increases, even for the highly impacted CCC, only reflect an increase from 104 cases per year to 590 cases per judge. Meaning each judge at the CCC will have an average of 3 cases per day, many of which should be low level, easy to dispose of administrative cases. See annex D.

3. These data provide some indication for where future caseload pressures will occur. However, without a more detailed analysis of the types of cases that may qualify as administrative cases and the potential for them to go to appeal, solid projections of the changes in caseloads for the appeals court and the Supreme Court cannot be made.

Recommendations

While the results of the workload study mainly explain with numbers what is already well known about the workload situation of the courts in Mongolia, they still raise a lot of questions that need to be carefully addressed. All of these questions are related to how to manage the courts in a way that ensure proper workload allocation among the different courts and judges and to identify what mechanisms have to be in place to improve the management of the courts:

- The variation in case processing times among similar types of courts can sometimes be explained by the fact that a court may be handling particularly complex cases. In many instances, however, slow processing of cases may be a result of inefficient processing and should be reviewed in more detail. This should include a review of how many times and for which reasons judges are sending cases back to the prosecution for additional evidence. There are implications that judges send cases back for the sole reason that they have been unable to prepare properly for the case and in order to avoid that the time limit expires. This is not only against the sprit of the law but creates double work in the prosecutor's office and in the court. This assessment could involve reviewing the timelines required for processing cases. In some instances courts may find that the short processing timelines established by the law do not provide for sufficient preparation time.
- The variation in time spent on non-case related time too needs to be further reviewed. Some of this work could be reduced, for example, by shifting certain administrative responsibilities to judges' assistants. Other work may be reduced through improved management practices that would clarify the range of activities judges should engage in, policies and procedures as well as operating standards that provide guidance for efficient operations. Also, considering the relatively high amount of time spent in training and seminars, it should be reviewed how judges are selected to attend training.
- Also, the current requirements to hear all cases as a panel of at least three judges does not contribute to efficient use of time by the judges. Low level cases do not require being heard by a panel. Similarly, the requirement for the Supreme Court to hear all cases in a five judges panel may not be needed. Reviewing the laws for such potential changes can improve court efficiency without endangering the quality or integrity of the court process and may reduce overall case processing time as well as time spent on non-case related work. Even without a change to the three panel requirements, alternatives to cover this requirement could be considered, such as rotating judges among Aimags to cover these positions.
- Considering the very low caseload for appellate courts in the Aimags – even if there will be an increase as a result of administrative cases submitted – it should be considered to establish regional Aimag courts that address the limited caseload in a

way that still provides sufficient access to the courts for all people. If there are temporary increases in caseloads as a result of changes in the law such as the administrative code coming into effect next year, it is important to have mechanisms in place to deal with any workload increases that cannot reasonably be addressed with the existing staff, the use of retired judges or temporarily hired lawyers is a solution applied in many countries.

- Overall, in addition to potential legislative changes to make the courts more manageable, the courts have a range of other management tools available that should be explored for implementation.
- Of high importance is that the courts are appropriately equipped to allow them to function in the most efficient way. In addition to low cost management changes, automation of the courts, and even regular access to simple things like functioning telephone lines for e-mail and fax, new file folders to improve records management are currently nor available impeding the courts' ability to perform properly. It is the responsibility of the courts to develop efficient structures and is the responsibility of the government to provide the funding to equip the courts in accordance with efficient management approaches.

2003 WORKLOAD STUDY RESULTS FOR THE PROSECUTOR'S OFFICES IN MONGOLIA[1]

Introduction

The results for the prosecutors' offices are available for each participating Aimag separately, as well as for each participating UB district, for the Capital City division and the Transportation divisions. Just as for the courts, the significant differences in workload, local requirements and working condition mean that the results should generally only be compared among offices of the same level, among Aimag offices and among UB offices but results from UB offices should not be compared to results from Aimag offices (and of course results for special divisions such as the transportation division can be compared to other offices only with careful consideration of their very different work). At the same time, results from all prosecutors' offices provide information to identify how the operations of any office can be improved to be more efficient and cost-effective.

The results of this study raise a number of questions about how prosecutors' are spending their time and how well they are organized and managed to handle their work efficiently. The sections below will discuss these issues generally for all offices in the Aimags and in UB as well as for the Capital City division and the Transportation division. While most of the results have logical explanations that hold across similar offices, others may be specific to an individual Aimag, districts or special offices. Therefore, all results should be shared with the prosecutors' offices that participated to provide further explanations for individual variations.

1. Prosecutor workload and staffing needs

The workload and staffing needs tables presented in the annexes provide information for each participating prosecutor's office by case type and express the following:

A. *Minutes recorded*: The total number of minutes recorded by the prosecutors at the reporting office spent on processing a specific type of cases
B. *Number of dispositions:* The total number of dispositions (i.e. decisions that terminated the case) recorded by prosecutors from the reporting office made for a specific type of cases
C. *Case weight or mean number of minutes recorded:* By dividing column A by column B we can calculate the mean number of minutes prosecutors at a reporting office need for processing a specific type of case.
D. *Number of cases handled:* The number of cases handled by the reporting prosecutor's office during 2002. A case is defined as one case = one defendant. This definition of what a case is differs from what is generally used, i.e. a case is otherwise defined by the case processing number assigned by the office and can include more than one defendant. Since this does not account for the potential increase in workload resulting from multiple defendant cases, the one case = one defendant calculation used here is more accurate for assessing prosecutor workloads. As a result of this difference, the number of cases processed per year by different type was not readily available. Therefore we used a proxy number – the number of disposition made during the six week data collection period multiplied to reflect the annual 52 week period.

[1] This report was written by Dr. Heike Gramckow as part of the USAID funded RP project. The opinions voiced in this report are those of the author and do not represent official USAID policy.

E. *Number of hours needed to process all cases of this type:* By dividing column C by 60 and multiplying it by column D we can calculate the number of hours needed to process each type of cases per year.

F. *Number of prosecutors needed to process this type of case:* According to information provided by the Prosecutor General's Office (GPO) prosecutors in Mongolia work an average of 208 days per year (= annual work days – holidays, vacation and average sick days). By dividing column E by 8 and 208 we can calculate how many prosecutors are needed to process the cases of a certain type annually.

G. *Non-case related activities*: In order to estimate how much time prosecutors are spending on non-case specific work per year, the minutes reported during the six week study period were multiplied to reflect this work over the 52 week year. The resulting amount of total minutes needed was then again divided by 208 (=the number of days a prosecutor is available) to identify how many prosecutors would be needed per year to handle the non-case related work.

Rural prosecutors' offices summary results: As indicated in the summary results table for all rural prosecutors' offices that participated in this study, the current number of prosecutors for these courts is low to handle the current caseload. The study data indicate that approximately 81 prosecutors are needed in the participating 10 Aimags to handle the current caseload. This would be generally less than the number of prosecutors currently available but the data also indicates that some Aimags do not have a sufficient number of prosecutors to handle all the work. This is specifically true for Uvurhangai and Selenge. At the same time, the case processing time comparison indicates significant differences in the individual offices' ability to effectively process cases and to manage workloads. Initial reviews of the time spent on non-case specific work further indicates that prosecutors in rural areas spent a significant amount of time on administrative work that may be more efficiently handled by support staff. The time reported in attending training and seminars is another area that needs further analysis. Overall, it appears as if a review of administrative responsibilities and management process could make a significant difference in ensuring that the operations of the rural prosecutors' offices are not only well designed and efficient but reflect the needs of the rural environment.

Also, as further discussed in the future prosecutors' needs projection section, changes that will come into effect after June 2004 with the new administrative code will have an impact on the rural prosecutors' offices that require further analysis but are likely to increase workloads in some of the rural offices along the lines of the workload increases outlined for the rural courts.

The summary results for rural prosecutors offices are presented in annex A-p.

UB prosecutors' offices summary results: The results for the UB district prosecutors' offices generally mirror the results of the rural trial courts – they generally have a sufficient number of prosecutors, some have a few too many. Some differences appear among the districts, for example, it seems that the Songinohairhan and Chingeltei districts need a few more prosecutors while the Suhebaatar district needs less, the Capital City Prosecutor's Office appears to need less while the Transportation office needs more.

The summary results for UB prosecutors' offices are presented in annex B-p.

2. Case processing time comparison

Comparison of average times the participating prosecutors' offices needed for processing specific case types provides information about the efficiency of the participating offices. The mean case processing times are presented in the tables in annex C-p. In comparing these data it is important to consider the different situation of the offices and the fact that even cases of the same type will differ in how much time they consume depending on the complexity of the legal issues and the number of people involved in a case. In addition, prosecutor's offices that are handling certain types of cases on a regular basis are generally faster since they are more familiar with the legal issues involved than an office that handles a certain type of case only once in a while. For example, the case processing times for the rural courts are generally longer than in UB. Since other factors, such as time needed to travel to different locations, are already excluded from the pure case processing time and counted under other work, the best explanation for this slower pace may be in the fact that these offices do not have the advantage efficient processing due to a combination of some automation of the UB offices and a higher frequency of processing the same type of cases. It could also be explained by a slower pace of the rural environment in general. Considering the different situation in UB and in the Aimags, comparison of processing times should only be made among the Aimag offices and among the UB offices. Even then the comparison needs to be carefully developed. There may be good explanations why a particular office seems to be slower in handling a certain type of case (i.e. handling a very complex case with many defendants will results in a slower pace). However, if an office is slower in handling most or all case types then the likelihood that this is a result of inefficient organization and management of the work is high.

3. Non-case specific work

An analysis of the non-case specific time reported by the prosecutors will provide many opportunities to review the type of work they are involved in and reconsider responsibilities and work assignment to increase efficiency in the courts. Non-case specific work generally relates to activities that are important for preparing for case work in general and also for the operations of the prosecutor's office overall. The range of non-case related work handled by prosecutors is shown in the tables provided in Annex D-p. While the type of this other work and the amount of time spent on them differs significantly among all offices and should be studied in more detail with each participating offices, it can generally be observed that prosecutors are spending a significant amount of time on administrative work and records keeping. Conducting research appears to be another time consuming task. Both areas should be reviewed to identify if a shift in responsibilities to support staff could reduce this particular type of work.

4. Future prosecutor offices staffing needs

The administrative code coming into effect next summer will have some impact on the workload of all prosecutors since they are likely to be responsible for representing the government. The following projections can be made based on currently available information:

- The matters that fall under the administrative law are currently to a large extent already covered by the civil code and other civil legislation, such as the land privatization law. As a result many matters later to be handled under the administrative code are not completely new or different matters, but matters that are currently handled under the civil code. Further, the shift in caseload will be from the

trial courts to the appellate courts. As a result, prosecutors working on the appeals court level are likely to experience an increase in caseload.

Using caseload data provided by the Supreme Court Research Center, the number of cases that fall into the categories of potential administrative cases can be used to project which appellate courts will experience what amount of increase in caseload. Using these data the only appellate court that is likely to experience a significant increase in cases is the CCC. The appellate courts in Dornod, Selenge, and Orhon too will feel this impact but to a lesser extent. Still, it needs to be considered that these increases, even for the highly impacted CCC, only reflect an increase from 104 cases per year to 590 cases per judge. Meaning each judge at the CCC will have 3 cases per day. See annex F-p.

- These data provide some indication for where future caseload pressures will occur for the prosecutors' offices. Since most of these cases should involve simple matters the increased workload would not be too dramatic. However, without a more detailed analysis of the types of cases that may qualify as administrative cases and the potential for them to go to appeal, solid projections of the changes in caseloads for the appeals courts cannot be made.

Recommendations

While the results of the workload study mainly explain with numbers what is already well known about the workload situation of the prosecutors' offices in Mongolia, they still raise several questions that need to be carefully addressed. All of these questions are related to how to manage the work of prosecutors in a way that ensures proper workload allocation among the different offices and prosecutors and to identify what mechanisms have to be in place to improve the management of the prosecutors' offices:

- The variation in case processing times among similar types of prosecutors' offices can sometimes be explained by the fact that an office may be handling particularly complex cases. In many instances, however, slow processing of cases may be a result of inefficient processing and should be reviewed in more detail. This should include a review of how many times and for which reasons cases are sent back to the prosecution by the court for additional evidence. There are implications that judges send cases back for the sole reason that they have been unable to prepare properly for the case and in order to avoid that the time limit expires. This is not only against the sprit of the law but creates double work in the prosecutor's office and in the court. This assessment could involve reviewing the timelines required for processing cases. In some instances the short processing timelines established by the law do not provide for sufficient preparation time.
- The variation in time spent on non-case related time too needs to be further reviewed. Some of this work could be reduced, for example, by shifting certain administrative responsibilities to support staff. Other work may be reduced through improved management practices that would clarify the range of activities prosecutors should engage in, policies and procedures as well as operating standards that provide guidance for efficient operations. Also, internal organizational structures may be reviewed to reduce duplicative tasks, such as those conducted for the inquiry stage and the investigative stage. A detail case flow review could provide more information about where to adjust the process to increase efficiency without compromising quality and integrity.

- Of high importance is that the prosecutors are appropriately equipped to allow them to function in the most efficient way. In addition to low cost management changes, automation of the prosecutors' offices, and even regular access to simple things like functioning telephone lines for e-mail and fax, are currently not always available and are impeding the courts' ability to perform properly. It is the responsibility of the PGO to develop efficient structures and it is the responsibility of the government to provide the funding to equip the prosecutors' offices in accordance with efficient management approaches.

Judicial Independence and Democracy[1]

In 1748, Montesquieu's political theory of government introduced an independent judiciary representing a third branch of government. Today this third branch is considered a key element of a democratic state. The authority to make law, implement it and monitor its implementation is distributed among the three branches of government to balance the enormous powers given to the state by its people.

In democratic, market-based societies, independent and impartial judiciaries contribute to the equitable and stable balance of power within the government. They protect individual rights and preserve the security of person and property. They resolve commercial disputes in a predictable and transparent fashion that encourages fair competition and economic growth. They are key to countering public and private corruption, reducing political manipulation, and increasing public confidence in the integrity of government.

How this third branch should to be structured and organized to guarantee the judiciary's independence to fulfill its designated role within a democratic state is less commonly agreed upon. To begin with, there are historic differences between common law and civil law systems that had an impact on the ways the structures to ensure judicial independence have developed. As a result there two basic models defining the relationship of the judiciary to the rest of the government:

(1) A judiciary dependent on an executive department for its administrative and budgetary functions, this model is predominately found among civil law countries; and
(2) A judiciary that is a separate branch and manages its own administration and budget, a model more frequently found in common law systems.

Although there are clear examples of independent judiciaries under the first model, the international trend is to give judiciaries more administrative control to protect against executive branch domination. Particularly in the past three decades many of the institutional elements supporting judicial independence in common law countries have been introduced in adequate variations in civil law countries throughout different regions of the world.

Today the importance of various key elements of judicial independence, such as judicial branch control to govern the courts through policy setting and administrative guidance, the authority to present and justify its budget without executive branch interference and to manage its own budget, judicial responsibility for creating a qualified and ethical judiciary through a democratic selection process, continuous education, and processes that uphold high standards of professionalism is increasingly better understood and supported by research and experiences of many countries around the globe.

[1] The author of this presentation is Dr. Heike Gramckow. The presentation was developed as part of the Mongolia Judicial Reform Program funded by USAID. The opinions voiced here are those of the author and do not reflect official statements of USAID.

There is general agreement of what key elements need to be in place and that each of these key elements have to be structured and organized to reflect the needs and situation of a specific country. There is also increasing agreement that the establishment of any of these elements alone does not guarantee judicial independence. The ability of the judiciary itself to shape the ongoing development of these key elements and to take responsibility for their implementation and institutionalization is what matters most.

In addition to the guarantees and authorities given to the judiciary to function as a third branch of government, the judiciary itself has to have the capabilities and capacities to be responsible and accountable for its structures, operations and decisions to act as a democratic branch of government. This means that, in addition to having mechanisms in place to build and sustain a capable and ethical judiciary, structures need to be in place within the judicial governance construct that reflect key elements of democracy, such as broad based participation in all governing processes, democratic selection of the judicial leadership, transparent operation of the leadership, and leadership commitment to accountability and ethical conduct.

Achieving judicial independence is a complex undertaking. There are various ways in which countries have sought to attain this goal. Much depends upon local customs, expectations, and institutional arrangements. Mongolia has made significant progress in establishing the key elements of an independent judiciary, and, like many other countries, it has experimented with what would be the best approach to establishing these key elements. For example, the GCC is central to judicial governance and key to ensuring judicial independence. Since its establishment the leadership of the GCC has moved from the Supreme Court to the Ministry of Justice and again back to the Supreme Court. The membership on the GCC has been changed over time and its range of responsibilities has been adjusted. This is a natural process in a country's efforts to defining its own democratic structures and indicative that Mongolia is a living, continuously evolving democracy.

Particularly over the past year many legislative changes have come into effect that can strengthen many of the key elements of judicial independence. For example:

- The leadership of the GCC has again moved to the Supreme Court, the number of judicial sector members has increased, and at the same time the membership on the GCC still includes other key justice sector decision makers, a very important element for ensuring inter-branch communications and coordination.
- The new professional and disciplinary committees, as well as the introduction of advisory committees to the GCC not only broaden participation of all levels of the judiciary in the work of the GCC but also involve other key justice sector members and representatives of the general public.
- The judiciary now has the chance to pro-actively shape future judicial education by creating a curriculum for the continuous legal education for the judiciary in close cooperation with the newly established National Legal Research and Training Center.

- The new judicial ethics code and the establishment of the disciplinary committee can contribute greatly to enhancing the judiciary's commitment to ethical, professional decisions and behavior.

At the current time, probably with the exception of sufficient control over the judicial budgeting process, most key elements of judicial independence are supported by the new laws; their implementation is the challenge Mongolia now faces.

In true democratic fashion it is now up to the judiciary as a whole to work with the other branches of government to take the opportunities that the new laws provide and actively engage in the process of advancing and securing judicial independence in Mongolia. This challenge to the judiciary to demonstrate its ability to function as an independent branch of a democratic government is multifaceted but it means among others:

- Guaranteeing the transparency of the selection of GCC membership, the GCC's decision-making processes and its operations
- Guaranteeing open and transparent processes for the selection of new judges and open and transparent merit-based promotions that are reinforced by security of tenure and transparent disciplinary processes.
- Gaining support from the other branches for an adequate budget to ensure proper court processes and to protect judicial independence, especially where the custom is to supplement the judiciary's budget with outside (i.e. international donor) resources.
- Increasing and strengthening the role the individual judge plays in promoting judicial independence and professionalism. Judges who lack sufficient commitment to an ethical and independent judiciary or who do not have adequate training and skills are more vulnerable to outside influences, as are judges and other court staff who are significantly underpaid.
- Recognizing the importance of transparency to judicial independence to make interference in court operations by other branches more difficult. This includes, among others, random case assignment to ensure assignments are party-neutral, good records management to ensure transparency and accountability, including publishing judicial decisions to deter rulings based on considerations other than law and facts, as well as eliminating interferences in judicial decisions not just from other branches of government but particularly from higher courts.
- Ensuring that annual disclosure of judges' assets and income provide an impediment to bribery.
- Increasing the judiciary's ability to address society's expectations of the judiciary regarding its independence, its ability to ensure efficient court operations, including timely handling of cases.

Judiciaries in many countries in transition are struggling to break free from their historic domination by elites, the military, political parties, or the executive. Ultimately, the judiciary has to take a stand and, like any other institution of democratic governance, has to be accountable to the public for both its decisions and its operations.

Prosecutors' responses to victims in the US[1]

In all kinds of cases, ranging from the most serious to the "smallest," law enforcement relies on cooperation from the victim. Prosecutors rely on crime victims as crucial sources of information for key decisions. Without the information provided by victims many cases would never be resolved or heard in court. For example, in a typical assault case, a victim must first contact the police to report the crime, relay the details of the incident, often participate in perpetrator identification, testify at trial and, if the defendant is convicted, make a victim impact statement at sentencing. The costs involved are generally carried by the victim, even though the State benefits from the victim's participation.

Victim participation is critical to effective law enforcement. Police and prosecutors depend on the voluntary participation of crime victims in order to investigate and prosecute criminals successfully. Studies in the US and elsewhere have shown that most crimes are brought to the attention of the police by citizen complaints, usually by the victims themselves (*R. Elias, The Politics of Victimization 134 (1986)*. The willingness of victims to come forward is vital to the successful prosecution of criminals. Without the victims reporting crime and testifying in court most crimes will go unpunished. While prosecutors represent the government, not the crime victims themselves, prosecutors in the US are encouraged and often required by law to consider the victim's interests as well. The US Supreme Court has stated that victim concerns must be considered in the criminal process.

> *[I]n the administration of criminal justice, courts may not ignore the concerns of victims. Apart from all other factors, such a course would hardly encourage victims to report violations to the proper authorities; this is especially so when the crime is one calling for public testimony about a humiliating and degrading experience such as was involved here. Precisely what weight should be given to the ordeal of reliving such an experience for the third time need not be decided now; but that factor is not to be ignored by the courts. Morris vs. Slappy, 461 U.S. 1, 14-15 (1983).*

That US prosecutors are required to consider the victim's rights and interests is particularly important since participation in the contemporary criminal process in almost any country, independent of the legal system, imposes numerous burdens on victims. Many feel further victimized by the criminal justice process. As a result victims increasingly fail to assist law enforcement agencies, to the detriment of the public at large.

While the role of the victim in the process of bringing offenders to justice is essential, the justice system in many countries does little to help victims and other witnesses through the often difficult and traumatic experience of being repeatedly interviewed, appearing in court – in addition to the trauma experienced as a result of the crime. The main concerns raised are that victims are reduced to evidence in cases between the state

[1] The author of this summary is Dr. Heike Gramckow. This summary was developed under the Mongolia Judicial Reform Program with funding from USAID. Any statements made and opinions expressed are those of the author. They do not constitute official statements of USAID.

and the accused, and that there is a general over-emphasis on the human rights of the accused and neglect of the human rights of the victim.

This is perhaps one of the key challenges for the justice system - if it wants to assist victims and witnesses this needs to be done in a manner which balances the Human Rights of the victims with those of the accused. In order to achieve this balance, the various justice institutions dealing with victims need to change to meet this challenge. For prosecutors' offices this generally means giving increased attention and assistance to victims of crime.

How US Prosecutors Are Responding to Victims of Crime

In 1982, a Presidential Task Force on Victims of Crime examined specific areas in which prosecutors could improve their response to crime victims.

Based on its finding the Task Force urged prosecutors to:

- Inform victims of the status of their cases from the time of the initial charging decision to determination of parole.
- Bring to the attention of the court the views of victims of violent crime on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution.
- Establish procedures to ensure that such victims are given the opportunity to make their views on these matters known.
- Charge and pursue to the fullest extent of the law defendants who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses.
- Strongly discourage case continuances, establish on-call systems for victims and witnesses to help prevent unnecessary inconveniences caused by schedule changes and case continuances, and implement prompt property return procedures.
- Give special consideration to both adult and child victims of sexual assault and establish victim-witness assistance programs.

Since that time more and more prosecutors in the US are implementing these principles. One of the most important developments has been the enactment of laws requiring prosecutors to provide fundamental rights to crime victims. According to a study conducted by the Bureau of Justice Statistics in 1994, 86 percent of prosecutors' offices in the US were required by law to provide services to victims; 82 percent were required to notify victims of the disposition of felony cases concerning them; 60 percent were required to provide victim restitution assistance; and 58 percent were required to assist with victim compensation procedures.

While these legislative mandates are important, they are not always fully implemented, often as a result of shortages of funds, but equally frequently because the prosecutors' are not aware of the importance of these regulations to the victim, to their own office, and to the trust the public has in their operations.

Still, the recognition of the importance of these services for victims is increasing. On the state level, there is a growing trend to sensitize every prosecutor in the office to the needs of victims. These offices recognize that they loose cases if victims decline to

participate. Cooperative victims ensure that prosecutors are able to effectively perform their role of protecting the public and ensuring swift, fair, and equal justice.

These offices assign personnel to provide victim support and services during all stages of the prosecution and trial as well as assist with gaining access to compensation and referrals to counseling or other assistance.

Increasing Victim Participation During Prosecution

One of the most important and basic rights of victims during prosecution is the right to participate. Victims' satisfaction with prosecutors increases dramatically if they are invited into the decision-making process and given the opportunity to present statements at sentencing and other critical stages of the process. Victims have a basic right to be informed of the status of their case. It is often the prosecutors' office that is assigned the duty to inform victims of the status of their cases by law.

Further, victim involvement in key decisions of the prosecution is considered a cornerstone of prosecutors' policy in the US. This includes victim input into sentencing decisions through the use of victim impact statements. But the victim's input at earlier stages is equally important, for example before offenders are released on bail. In many US prosecutors' offices prosecutors make diligent and reasonable efforts to consult with victims and witnesses and to provide them with the earliest possible notice of key decisions, if the victim has provided a current address or phone number.

In all cases, particularly those involving sexual assault other violent crimes, prosecutors should confer with the victim or survivors before deciding not to file charges, or before deciding to seek dismissal of charges already filed. It is critical that victims have a voice before such a momentous decision is made. Speaking with these victims before making a filing decision also benefits the prosecutor by providing another opportunity to evaluate victim credibility. In some cases, prosecutors may change their mind about declining to prosecute because they recognize that the victim will make a good witness. While prosecutors decline to file charges in many cases brought to them by law enforcement and others, it is often a difficult decision. For a victim, not knowing why the crime was not prosecuted makes their experience even more painful. The prosecutor should explain the decision not to bring charges and advise the victim of other options they may have available to them, including in some cases filing a civil lawsuit.

For victims delays and continuances are one of their primary frustrations with the criminal and juvenile justice systems. Prosecutors should establish policies to "fast track" the prosecution of sexual assault, domestic violence, elderly and child abuse, and other particularly sensitive cases to shorten the length of time from arrest to disposition. Prosecutors should encourage judges to give top priority to these cases on the trial docket and should try to ensure that the case goes to trial when initially scheduled. When continuances cannot be avoided, prosecutors should notify victims and witnesses as soon as possible to prevent inconvenience and costs such as transportation and time lost from work for the victim. Reasons for continuances should be explained. Since delays and continuances can result in the unavailability of some witnesses and the fading memory of others, prosecutors should vigorously oppose continuances except when they are necessary for the accomplishment of legitimate investigations or to accommodate the scheduling needs of victims.

There are also times when the prosecutor can neither accept the victim's wishes nor explain the reason for a contemplated plea agreement, such as when the defendant is cooperating with an ongoing investigation or working undercover. In these cases, prosecutors should not avoid conferring with victims, who will likely learn about the decisions. It is best if the prosecutor or victim advocate confers with victims beforehand and indicate at the end that a plea to a lesser crime may be accepted on public policy grounds. The prosecutor or advocate should then explain that one or more of those legitimate grounds will guide the final decision. Victims may be upset with such an explanation, but less than having their right to consultation ignored.

Protecting Victims and Witnesses from Intimidation and Harm

Responding to threats and acts of intimidation against victims and witnesses is one of the greatest challenges prosecutors face. A national survey in 1994 funded by the National Institute of Justice found that intimidation of victims and witnesses was a major problem for 54 percent of prosecutors in jurisdictions with more than 250,000 residents and for 43 percent of prosecutors in jurisdictions with between 50,000 and 250,000 residents.

Statutes enacted in the US to protect victims and witnesses from harm take various forms. For instance, several states have created criminal offenses for intimidating, harassing, or retaliating against a victim or witness. Other states have enacted procedural norms that require the court to consider the safety of a victim or witness in ruling on a pretrial release. Several states have amended their pretrial release laws to require or permit the courts to enter no contact orders as a condition of release in cases where there is risk of victim or witness intimidation.

Prosecutors should use the full range of measures at their disposal to ensure that victims and witnesses are protected from intimidation and harassment. These measures include ensuring that victims are informed about safety precautions, advising the court of victims' fears and concerns about safety prior to any bail or bond proceedings, requesting no-contact orders and enforcing them if violated, and utilizing witness relocation programs and technology to help protect victims. Among the most effective tools now used to protect victims and witnesses are cellular telephones, alarm systems that notify police directly, and electronic bracelets to track defendants' movements.

Prosecutors should always ask victims a simple question: "Are you afraid?" and then ensure that victims and witnesses are routinely given information on remedies such as restraining orders and protective orders to help reduce the likelihood of harm. Prosecutors have an obligation to continue to improve and expand services to victims of crime, to speak on behalf of the victim, and to protect the victim from any injustice.

Victims should be encouraged to make an oral statement at pre-trial and other hearings asserting harassment, threats, physical violence, or intimidation by the defendant (or at the defendant's direction) against the victim or the victim's immediate family. Based on these statements the prosecutor should request that the defendant's bail or release on personal recognizance be revoked.

Other innovative approaches to limit victim and witness intimidation include:

- Special Victim Witness Assistance Centers within prosecutor's offices that provide a variety of services to protect victims and witnesses from intimidation, including assessing their security needs and making arrangements for temporary housing in motels or longer term relocation in public housing. Advocates are available 24 hours a day and work with the police department to provide emergency response to victims or witnesses in danger, including relocation in the middle of the night.

- Many courts and prosecutors' offices have separate waiting areas for victims and prosecution witnesses that protect them from the defendant and defense witnesses. At minimum, prosecutors schedule victim interviews so they do not coincide with offender interviews.

- Other agencies, such as the Department of Housing and Urban Development in the US, may be able to assist with witness relocation into public housing.

Special Victim/Witness Assistance Units

Experience in the US has shown that the only way of ensuring that the needs of victims and witnesses are met is to have a separate unit solely dedicated to their assistance. Prosecutors are already overworked and their primary efforts are not always consistent with response to victim needs. Still, all prosecutors need to be sensitive to the needs of victims to ensure their rights are protected.

These special units are generally staffed with one or more victim/witness advocates that focus on ensuring that victims are properly notified, have access to counseling and support services, have the means to participate in the process (i.e. transportation to the courts, access to legal counsel) and understand the processes well enough to participate. These victim advocates may attend court hearings with victims, arrange for transportation to and from the prosecutors' office and courthouse, and ensure the availability of wheelchairs and other needed assistance in the courthouse.

Many prosecutors' offices in the US also established special programs to assist victims with special needs, such as elderly victims who need assistance with transportation, and victims with disabilities. In other offices the services include a playroom for children, important not just for child victims and witnesses but also to make it easier for parents with children to testify or provide other evidence.

At a minimum, the units ensure that crime victims receive notice of their legislatively and constitutionally mandated rights and provide information and referrals about available community-based services. Informing crime victims about key events within the justice system so that they will have a chance to exercise their rights of participation is critical. To reach all victims in the community, particularly populations underserved due to barriers of culture, disability, or just distance, notifications should be provided in the manner and means most likely to effect actual notice, such as using appropriate languages and media.

Special Crime Prosecution Units and Vertical Prosecution

Many prosecutors have created special units within their offices to serve victim populations with similar needs, such as victims of domestic violence, sexual assault, and child abuse. Prosecutors in these units receive extensive training in their area of specialization. Some of these special positions are part prosecution, part responsible for police training and community outreach and education to better address the special needs of victims of domestic violence or other violent crimes.

In the US it is generally considered beneficial if prosecutors adopt a vertical prosecution process for domestic violence, sexual assault, and child abuse cases. Most prosecutors; office in the US are organized similarly to the prosecutors offices in Mongolia – they are organized for horizontal prosecution, meaning different prosecutors handle different stages in the process. In the US, when a typical case comes into a US prosecutor's office, less experienced prosecutors are often assigned to handle preliminary matters such as pretrial release hearings, arraignments, and preliminary hearings. Cases prosecuted as felonies are often reassigned to more experienced prosecutors to handle the trial. While this practice is useful to give new attorneys experience and allow seasoned attorneys to prepare for trial, it can be very upsetting to victims by forcing them to retell their story to another attorney with whom they have not yet developed a trusting relationship. The same can happen in Mongolia if prosecutors that supervise the inquiry and investigation get involved in interviewing victims and witnesses.

Vertical prosecution, meaning the same experienced prosecutor handles the case from the very beginning through the trial stages, prevents this discomfort. Equally important is that vertical prosecution allows prosecutors to develop expertise on specific types of cases and resources available to assist each type of crime victim. Cases handled through vertical prosecution allow prosecutors to build rapport with victims by remaining with the case from intake to sentencing. This also ensures that victims do not have to tell their story repeatedly to prosecutors at various stages of the case and that the cases are handled swiftly.

In other offices multidisciplinary teams bring together professionals from different disciplines in one location to respond to a specific crime. By using this coordinated response, prosecutors reduce the number of times a victim must be interviewed and significantly diminish the likelihood that a victim will be revictimized by an insensitive criminal justice system. Rather than requiring victims to retell their story through repeated interviews and examinations by law enforcement, prosecution, medical, mental health, and social services agencies, a multidisciplinary approach brings all of these professionals together. Such centers contain technology for videotaping and one-way observation of interviews and often use a specially trained, designated interviewer to avoid any legal conflicts over the interview process. The prosecutor assigned to this case participates in each interview, and, if a child is the victim, a child protective service worker observes the child's responses to determine if he or she should be returned to a home where an alleged molestation has been reported.

Training for Prosecutors and support staff

Ideally victims' rights and sensitivity education should be part of the basic education in law school but at least all prosecutors need to have this training during their initial

orientation and throughout their careers. Without education on victims' rights and needs, inexperienced lawyers entering the profession will not understand the importance of protecting these rights and assisting victims, and even experienced prosecutors may become so focused on their prosecutorial work that they pay less attention to the victims' needs and rights. This education should general introductions to victims' rights, victims' needs, office policies regarding handling of victims and also include instruction on victims with disabilities and multicultural issues. The trainers for all subjects should include a diverse array of knowledgeable professionals and volunteers, including victims of crime.

Integrating the victim issues into legal and prosecutor education programs will improve the ethical standards of the legal profession, as well as produce better representation for victims.

Return of victims' property

One way to reduce the difficulties victims are facing is to ensure that any property of the victim that was submitted as evidence in the case is returned as promptly as possible. In the US prosecutors' offices often establish special procedures to ensure the prompt return of victims' property, if it is no longer needed as actual evidence in court. These prosecutors recognize their responsibility to release property as expeditiously as possible, to take the initiative in doing so, and to establish the procedures necessary to expedite the release of property to its lawful owner. To do this effectively, US prosecutors work closely with law enforcement and the judiciary to develop procedures and protocols for expeditious property return. While some items may need to be retained for admission during the trial, items that can be presented to the court just as effectively by a photograph should be returned to the victim.

Finding the Resources for Victim Services

As mentioned before, even when the law gives the victims certain rights, the resources needed to inform victims during all stages of the process, assist them with information and other support to participate in the process, and to provide referral services are not always available. Particularly smaller prosecutors' offices in the US may lack resources for even basic services and larger offices may not have a large enough budget to fulfill all the specialized support needs of all victims they are dealing with. Generally the state should provide the office with a sufficient budget to provide at least the assistance required by law, but even that is not always the case, especially in smaller jurisdictions.

Since victims are so important to the prosecutors' work some offices have developed alternative ways to provide the needed resources. They work with NGOs that specialize in human rights or special victim issues, such as domestic violence to assist victims throughout the process. Sometimes a special program is developed with a law school that gives students educational credits for serving as a victim assistant for a semester. Similar arrangements are sometimes made with other university programs, such as child psychology, education, social studies. Another alternative is the use of volunteers, including former victims, who experienced the need for help when going through this process.

Recommendations for

ESTABLISHING A JUDICIAL EDUCATION CURRICULUM IN MONGOLIA

EXECUTIVE SUMMARY

PREPARED FOR

MONGOLIAN NATIONAL LEGAL TRAINING CENTER

By

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EXECUTIVE SUMMARY

Judicial Education is an essential building block for positive change and growth of the courts as effective and respected providers of justice in an ever-changing society. Judicial educators and planning organizations must have the foresight and independence to lead in the development of a shared vision and curriculum for the future.

One of the most significant developments in judicial education has been the recognition that judges, like other professionals, must continue developing the skills needed for their work on the bench through a lifetime of continuous education and professional development. Judicial education cannot be relegated to teaching only legal rules, past and present. An effective judicial curriculum must emphasize the personal development of judges and other court personnel, as well as institutional reform. The development of such a system is an ambitious undertaking requiring careful planning and coordination among all stakeholders.

These recommendations introduce a normative systematic process for establishing a judicial education curriculum for Mongolia. The consultant met with the NLC Director and members of the judges' education committee, reviewed literature from the NLC, and assessed the current structure and curriculum of the NLC. It is hoped that the development of these recommendations will greatly enhance the efforts of the Mongolian Judiciary to create a permanent and comprehensive program of judicial education.

The principal recommendations of this report include:

1. **Development of a Long-Range Strategic Plan**

This recommendation proposes that through the NLC, staff assist the education institute in the preparation and development of a comprehensive strategic plan or "master plan", for judicial branch education. Components of the master plan would include: (1) a statement of mission; (2) specific goals and objectives; (3) targets of performance linked to goals and objectives; (4) specific strategies for reaching performance targets; and finally, (5) evaluation. The development of these components will aim toward increasing the utility of the master plan for guiding decisions about budgeting and allocation of resources, for assessing performance, for sharing a unified sense or "vision" of the Mongolian Judicial Education System and for increasing the Institutes staff ability to conduct effective curriculum planning.

2. **Strengthening The Judicial Education Committees' Role In Establishing A Vision, Overall Goals, Guiding Principles, And Guiding Educational Programming For The Judges' Curriculum.**

A review of the general policy-making scope of the JEC is recommended, as the NLC continues to establish its responsibility in various areas. It is suggested that a formal review can provide the foundation for an efficient and effective relationship between the NLC and JEC.

3. **Conducting a Needs Assessment**

Needs assessment is a potentially powerful tool that can enable the NLC staff and JEC to identify those content areas in which judges may be weak and to correct deficiencies through educational programming. To be used successfully, needs assessment results must be combined with marketing data on practitioners' preferences regarding methods of program delivery and

scheduling, knowledge of their learning styles, and attention to providing knowledge and skills that can be transported into the court setting.

It was recommended that the NLC coordinate three focus group sessions as a first step in conducting a needs assessment for a judicial curriculum. The first focus group will target mid-volume, experienced and non-experienced judges. The second focus group will target the advisory board. Finally, a focus group with experienced and non-experienced judges of low volume rural courts should be conducted. An instrument is presented for use in the focus groups.

4. Developing a Specific Curriculum for Judges

This recommendation attempts to put into perspective the significant considerations in developing a judicial curriculum and sets forth a simple model for curriculum planning that demonstrates where planning the content of courses, as well as the actual teaching, fits into the curriculum development process.

This recommendation suggests that a model of curriculum planning for the Judges' Curriculum should focus on answering seven basic questions concerning (1) purpose; (2) curriculum objectives; (3) the selection and organization of learning experiences; (4) instructional objectives; (5) resources, time and space; (6) learning activities; and (7) evaluation of the curriculum. It is also recommended that teaching needs to be done in ways that help judges integrate the wisdom of practice and the wisdom of specialized knowledge. Finally, it is strongly suggested that the judges' curriculum provide for how courses can be designed in ways that help learners make this integration through experiential learning.

5. Continuation of Faculty Development

It is recognized that Mongolia has already had extensive experience in Faculty Development. The JRP has a long history in conducting faculty development and these efforts are to be commended. This recommendation focuses on supporting the continuation of faculty development and the importance of moving faculty development towards a peer educational model.

The peer group educational model in the common law countries is primarily employed for the continuing professional education of judges. It incorporates much of what has been learned in recent years about adult education. The peer group education model involves active judges sharing their judicial knowledge, skills and values, thus providing both new and experienced judges with the latest information about everyday problems they confront and emphasizing a practical approach in dealing with these matters. While law professors are experts in the law, many do not know how attorneys and judges apply the law in everyday work. For this reason, they are less preferred as teachers for CLE. The best-rated teachers for CLE are generally the judges who know the law and the skills, techniques, and values needed to implement that law. The majority of CLE instructors should be judges, prosecutors, and other practicing lawyers specially trained in modern participatory learning methods and materials. Therefore, developing in-house training capacities and a strong emphasis on train-the-trainers programs for part-time faculty is essential.

6. Exploring Distance Learning Technologies

Several situations exist in courts today that compel us to think out of the box for new

solutions. First, the technology of the Internet and communication capability of government have both improved dramatically in recent years, allowing more courts the opportunity to consider taking advantage of alternative methods of distance learning technologies. Secondly, government rarely allocates the necessary funding for training. Distance learning, when considered as part of the educational infrastructure, can ameliorate the cost factor by allowing staff to stay at their court. The specialized training comes to them, reducing travel costs as well as the necessity of taking judges away from their day-to-day duties.

This recommendation provides an overview of distance-learning technologies that can support the CLE training process and increase access to training. These educational delivery systems emphasize independent and distance learning concepts that have proved most successful in CLE and are cost-effective, sustainable alternatives once they are created.

CONCLUSIONS

In order for judicial education to fulfill its potential contribution to creating and maintaining a judicial branch that is an effective and respected provider of justice, there are several conditions that should be considered:

1. In its administration and implementation, the judicial education program should be a program strongly supported by judges and should incorporate judges in the planning and evaluation process to ensure that judge's real and perceived needs are taken into account in every program presentation.

2. The judicial education program should provide for career—long education, and not be limited to new judge training and should address a wide variety of subjects, including theoretical and practical knowledge in legal and non-legal fields, the development of skills in areas from decision-making to management, and subjects that throw new light on the human condition.

3. The judicial education program should provide, in its curriculum design and methods, for significant interaction among the judges participating in each program.

4. Finally, the NLC should adopt a peer educational model that emphasizes the use of primarily active judges as faculty, with assistance as needed from law professors, lawyers and other non-judges; and provides for the training of faculty in the use of modern participatory learning methods.

Post Course Evaluation Summary 1

Number of respondents, who participated only in JRP training: 424

Participant information:

258 Judges 106 Prosecutors 81 Advocates 52 Others (Head of the Court Personnel Offices, secretaries and lawyers at the Aimag Governor's office)
186 Male 311 Female

a. General Reactions

Overall, I thought the course was:	1	2	3	4	5	**4.16%**
The usefulness of the written materials after the course was:	1	2	3	4	5	**4.34%**
To what extent will you be able to apply what you learned to your work?	1	2	3	4	5	**4.04%**

Prioritize how useful the sections of the course were in retrospect. 5 the most useful, 4 the next most useful, 3 the next most useful, 2 the least useful, and 1 useless useful.

JRP

Criminal code	4.47% (sum and average)
Ethics	4.32%
Criminal Procedure code	4.44%
Adversarial Skills	4.27%

b. Course Materials

Have you refereed to the course materials since the course ended?
Yes 481 (number) No 18

If yes, how often do you refer to the course materials?

Daily	232 (number)
Weekly	154
Monthly	103
Never	10

Prioritize how useful the sections of the course materials are in retrospect: 5 the most useful, 4 the next most useful, 3 the next most useful, and 2 the least useful, and 1 useless.

JRP

Criminal code	4.57% (sum and average)
Ethics	4.23%
Criminal Procedure code	4.52%
Adversarial Skills	4.33%

c. **Effect on behavior.**

1. Have you changed the way you perform your job due to what you learned in the course?

Yes 474 (number)
No 25

If yes, please list some examples of changes in your job performance due to the course you attended.

Prioritize the areas, where the most changes have occurred: 5 the areas of the most changes, 4 the areas of the next most changes, 3 the areas of the next most changes, and 2 the areas of the least changes, and 1 the areas of no changes.

JRP

Criminal code	4.32% (sum and average)
Ethics	4.16%
Criminal Procedure code	4.35%
Adversarial Skills	4.26%

How often does your job performance change from the past based on what you learned?

Daily	302 (number)
Weekly	121
Monthly	61
Never	3

2. Your course was attended by members of other branches of the legal profession. Have the judges and opposing counsel changed the way they perform their jobs based on what they learned in JRP and GTZ courses?

Yes 345 (number)
No 63

If yes, please list some examples of changes in their job performance due to the course they attended.

Prioritize the areas, where the most changes have occurred: 5 the areas of the most changes, 4 the areas of the next most changes, 3 the areas of the next most changes, and 2 the areas of the least changes, and 1 the areas of no changes.

JRP

Criminal code	4.23% (sum and average)
Ethics	3.96%
Criminal Procedure code	4.24%
Adversarial Skills	4.23%

How often do you notice their job performance changed from the past based on what they learned?

Daily	259 (number)
Weekly	99
Monthly	60
Never	5

d. What suggestions do you have to make this program better in the future?

a) **in terms of a date of training: 243**

b) **in terms of teaching methodology: 183**

c) **in terms of training course duration: 278**

d) **in terms of handout materials: 218**

e) **in terms of future training topics: 238**

f) **othe: 148**

NATIONAL CENTER FOR STATE COURTS

International Programs Division
2425 Wilson Boulevard, Suite 350
Arlington, VA 22203
www.ncsconline.org

Mongolia Judicial Reform Program

CLE STUDY TOUR REPORT
July 31 - September 8, 2003

Cooperative Agreement
#492-A-00-01-00001

The CLE study tour for Dr. Amarsanaa, Director of the National Legal Center, and Dr. Mendsaikhan, Training Manager of NLC, began on Thursday, July 31, 2003 when they traveled to San Francisco accompanied by Mary Frances Edwards, the JRP's Legal Training Specialist. The complete agenda of the tour is attached. The objectives of the tour were for Dr. Amarsanaa and Dr. Mendsaikhan to:

1) Better understand management skills;
2) Have improved knowledge of how to develop curriculum;
3) Know the factors required to attract audiences to their CLE courses;
4) Know how to take advantage of available technology;
5) Be aware of how mandatory retraining systems are implemented; and
6) Follow an action plan to improve NLC operation on these issues.

Conference

On August 1, the Legal Training Specialist held a briefing session, reminding them of their obligations under the stakeholder agreement and giving them background information about continuing legal education, the agenda, the organizations to which they were making site visits, and the San Francisco area. On August 2, Amarsanaa and Mendsaikhan participated in a "Boot Camp" for new CLE administrators presented by the Association for Continuing Legal Education, followed by a reception for new members at which the Legal Training Specialist introduced them to some of ACLEA's officers and most experienced members.

The ACLEA conference took place August 3 – 5. Amarsanaa and Mendsaikhan attended all the sessions; when there were multiple breakout sessions simultaneously, they split up to maximize exposure to new ideas. The conference had course materials for each topic, totaling eight pounds. Amarsanaa and Mendsaikhan also took voluminous notes. In addition to the formal program, they visited each exhibit booth and networked during the opening reception and refreshment breaks. The ACLEA members were thrilled to have participants from far away, and they welcomed the Mongolians with great enthusiasm and generosity.

Additional Meetings

Before going to the United States, the Training Specialist set up additional meetings with CLE experts attending the ACLEA conference. The participants met with:

1) Liz Williamson, Associate Director of American Bar Association CLE and an expert on CLE video production on production, formats, TV studio needs, and equipment;
2) Richard Diebold Lee, now a CLE consultant, previously Director of California Continuing Education of the Bar, an expert on the history of CLE, mandatory CLE, MCLE credit hours, penalties for non-compliance, choice of CLE topics, methods of CLE presentation, and bar admissions; and
3) Patrick Vane, President of Taecan.com, a pioneer in the presentation of CLE through computerized distance education, on on-line (Internet) learning, program planning, market analysis, and technical analysis.

Site Visits

After the ACLEA conference, on August 6 the group visited California Judicial Education and Research Center, where Bob Lowney and Robert Schindewolf, Managing Attorneys in the Education Division, gave us an overview of CJER, the California Judicial Council, CJER's distance education curriculum, the bar admission process, California judicial education programs and publications, and a tour of their facility, including their TV studio.

They spent the afternoon of August 6 at the west coast office of the Practicing Law Institute, where John Mola told them the history of PLI, the oldest national CLE organization in the US and described PLI programming and procedures, including speaker fee and reimbursement policies, distance education, CLE satellite broadcasts, advance planning and time tables, curriculum development, teaching legal ethics, and revenue generation through rental of PLI's conference center. Mr. Mola gave them a tour of PLI's state-of-the-art conference center, which can beam in its live New York courses by satellite. Such a course was happening during our visit.

On August 8, the group spent the day at California Continuing Education of the Bar, an affiliate of the University of California with offices in Oakland, CA. Suzanne Good and her program staff provided an over view of their activities, structure, and planning process, including the CLE curriculum and publications. Program Attorney John Hentschel also explained the criminal prosecution system and the distinctions among federal, state, county and local law. He also demonstrated Cal CEB's web site, to which they gave the NLC access. Cal CEB consultant Peter Crook shared some of the approaches he has taken when teaching in Malaysia. Program Attorney Holly Kraemer also participated in the presentation, particularly during the question & answer segment.

The site visits and tours were extremely informative. At all the site visits, the hosts gave Amarsanaa and Mendsaikhan valuable sample brochures and publications to which they can refer afterwards. Each visit provided Amarsanaa and Mendsaikhan with ample opportunity to ask questions about whatever issues intrigued them. The Mongolians were stunned that the emphasis in the US CLE curriculum is on business law, that almost all CLE presenters in the US are volunteers, and that many lawyers do not even get reimbursed for their travel expenses to speak. For instance, PLI now reimburses the travel expenses for only professors and government lawyers, not the private bar.

All the major participants in these extra meetings and site visits signed Donation of Time forms to document the cost share their organizations contributed to the study tour, which totals over $2,000.

Strategic Planning and Action Plan

The Mongolian translation of Chuck Ericksen's recommendations for development of a Mongolian judicial education curriculum was not completed until the study tour was already in progress in San Francisco. Despite valiant help from Cal CEB staff, no one could load the Mongolian font onto a computer to print it out for Amarsanaa and Mendsaikhan. Even if it could have been done, by that late in the week they had no time to read and absorb it. Because of that, they did not begin writing the first draft of NLC's strategic plan on the final day as hoped, but Mendsaikhan delivered the first draft during the third week of September. Section one of the first draft is an action plan.

English Study

Amarsanaa returned to Mongolia immediately. Mendsaikhan remained in the United States until September 8 to take English lessons as part of the study tour at his own expense, another cost share item. The Legal Training Specialist monitored him by phone while she was still in the US and after returning to Mongolia. His English has improved. It was immediately evident when he returned that he understands much more of what I say and asks for interpretation only on the more complex issues.

Fulfillment of Objectives

The Mongolians found the tour to be very helpful. Amarsanaa commented frequently throughout the tour about the valuable new ideas he was getting. Mendsaikhan thinks the best parts were the "boot camp" for new CLE administrators, networking with other conference participants, and the site visits, which provided practical advice and information. In contrast, the ACLEA conference was interesting and thought provoking but frequently more theoretical. The segments of the conference with immediate practical application in Mongolia were on needs assessment, course evaluation, and development of publications. The study tour met its immediate objectives of exposing Amarsanaa and Mendsaikhan to new ideas and successful CLE management methods. Various segments were helpful in fulfilling different specific objectives:

1) Better understand management skills – Boot Camp, conference, PLI visit.

2) Have improved knowledge of how to develop curriculum – all site visits, conference break out sessions, descriptions at the conference of ACLEA award winning courses (in particular, creative presentation methods for teaching legal ethics)

3) Know the factors required to attract audiences to their CLE courses – conference sessions, conference networking, study of sample brochures

4) Know how to take advantage of available technology – conference exhibits, meetings with Vane, Williamson, CJER, Cal CEB, PLI

5) Be aware of how mandatory retraining systems are implemented – meeting with Richard Diebold Lee

6) Follow an action plan to improve NLC operation on these issues – first draft under review by stakeholders

The tour ended in September, so it is impossible to guarantee the long-term success in meeting specific objectives. However, the changes in behavior in September and October and the prompt, enthusiastic drafting of a strategic plan are promising signs of long-term success in meeting the objectives. Various segments of the first draft of the plan described below demonstrate the immediate accomplishments of the study tour.

Strategic Plan

The progress toward some of the study tour objectives is reflected in the first draft of the strategic plan. Previously, NLC planned to employ full time trainers as permanent CLE teachers. During summer 2003, experienced lawyers complained over the poor quality of education from these full-time trainers, who had little or no practical experience. Mendsaikhan now wants to convert five of the NLC staff positions into what PLI and other ACLEA members call "Program Attorneys," lawyers who organize and manage CLE courses but do not teach because they are not in active practice. He wants to use part-time trainers still active in their branch of the profession instead of full-time NLC staff trainers. This demonstrates improved management skill.

In addition, NLC is already implementing needs assessment and course evaluation techniques learned at the conference. Mendsaikhan is running focus groups, in keeping with the Ericksen recommendations, to assess the needs for the judicial curriculum. Legal ethics will definitely

be a topic. Distance education and written course materials are major components of the strategic plan, demonstrating a grasp by the NLC of how to take advantage of existing technology. NLC is also exploring the reason for deletion of a mandatory retraining clause from the lawyer qualification act and researching the feasibility of a mandatory CLE rule in Mongolia. Finally, the first draft of the strategic plan contains additional ideas acquired or encouraged during the study tour, such as cooperation and coordination among the other CLE providers (GCC, GPO, Advocates). NLC has now started asking JRP for more staff training on various management issues

The NLC Judicial Education subcommittee met Friday, October 17 to discuss the judicial curriculum and strategic plan. The strategic plan and action plan for 2004 should be final late in 2003.

NATIONAL CENTER FOR STATE COURTS

INTERNATIONAL PROGRAMS DIVISION

CONTINUING LEGAL EDUCATION LAW STUDY TOUR FOR MONGOLIA
July 31 – August 9, 2003

Thursday, July 31

0730 **Depart Ulan Bator – MIAT 301**

1050 **Arrive Seoul**

1345 **Depart Seoul – United Airlines 808**

2040 **Arrive San Francisco, California**

Travel by shuttle to hotel

Check into Hotel
Grand Hyatt San Francisco – rooms are prepaid
345 Stockton St.
San Francisco, CA 94108
Tel: 1-415-398-1234
Fax: 1-415-391-1780

Expedia.com booking ID:
Edwards – 8970422
Amarsanaa – 8970423
Mendsaikhan – 8970424

Interpreters' rooms - Confirmation No. 302-51-10

Friday, August 1 – 1 interpreter (consecutive)

Free morning to rest from travel

0938 **Interpreter (Chimgee) Arrives from Denver, CO (United Airlines)**

1300 **Orientation Covering the following items:**
Program logistics
Per diem
Insurance
Cultural orientation

Overview of the U.S. Experience in Establishing and Operating Continuing Education and Training Programs

Mary Frances Edwards

This session will focus on several critical factors in developing a continuing education system; from establishing a vision to implementing faculty development, formulating a curriculum and selecting instructional methods, and administration of the

CLE organization. Ms. Edwards will discuss issues and trends in U.S. and provide a nationwide overview of CLE organizations.

Developing an Action Plan

Ms. Edwards will discuss the steps to creating an action plan that is specific and achievable and will provide a systematic methodology for recording observations during the study tour.

2112 Interpreter (Ganzorig) Arrives from Washington, DC (American West)

Saturday, August 2 – 2 interpreters (simultaneous)

Transportation to Conference Hotel via taxi or walking
Fairmont Hotel 950 Mason Street, San Francisco, CA) approximately .62 miles from the Grand Hyatt.

0815 CLE Boot Camp (an introduction for new CLE administrators)

to 1630

Dr. Amarsanaa and Dr. Mendsaikhan will attend the boot camp.

1645 Welcome reception for new members

to 1830

Return to Grand Hyatt

Sunday, August 3 - 2 interpreters (simultaneous)

Walk or taxi to Fairmont Hotel

0800 Special Interest Group (SIG) Meetings

1000 President's Welcome

1030 Keynote Address

1200 First Time Attendees Luncheon

1330 Concurrent Workshop A
to 1430

Refining Essential Technology Skills for CLE Professionals – Edwards
Mining for Nuggets – Amarsanaa
49 Tips to Save Money on Hotels and Other Amenities - Mendsaikhan

1530 Concurrent Workshop B
to 1645

The Mother Load, 2: Finding Strengths In Your Staff – Edwards
Stake Your Claim to Publications Customers – Amarsanaa
Needs Assessment and Evaluation Techniques - Mendsaikhan

1645 **Meeting with Liz Williamson, ABA**

1800 **Reception**

Return to Grand Hyatt Hotel

Monday, August 4 – 2 interpreters (simultaneous)

Walk or taxi to Fairmont Hotel

0900 **Keynote Address**

1100 to 1215 **Workshops C**

The Mother Load, 3: Designing Really Productive Staff Retreats – Edwards
Whose Comfort Zone Are You In? – Amarsanaa
How to Develop an Affordable and Successful Brochure – Mendsaikhan

1215 to 1430 **SIG Lunches or Roundtables with Experts Luncheon**

Executive Leadership – Edwards

1215 Lunch on Own

Mr. Amarsanaa and Mr. Mendsaikhan will have lunch on their own accompanied by the interpreters.

Free afternoon

Tuesday, August 5 – 2 interpreters (simultaneous)

Walk or taxi to Fairmont Hotel

0830 *Business Meeting, Elections and Breakfast*

0930 **Meeting with Patrick Vane and Demonstration of online CLE**

1030 **Super workshop**

1200 to 1430 **SIG Lunches**

The entire group will attend the Nationals SIG luncheon.

1330 to 1445 **Concurrent Workshop D**

The 24-Karat Speaker - Amarsanaa
Program Evaluations: Forms and Approaches – Mendsaikhan

1515 Concurrent Workshop E

to 1630

It's All About People – They're Worth Their Weight in Gold! - Amarsanaa
Creating the Gold Standard for Speaker Presentations - Mendsaikhan

1630 to 1715 **Closing Session**

1830 to 2130 **Closing Dinner Event**

Return to Grand Hyatt Hotel

Wednesday, August 6 – 1 interpreter (consecutive)

910 **Meeting with Richard Diebold Lee, CLE consultant**

Taxi from Grand Hyatt to CJER

1000 to 1130 **Meeting at the California Judicial Education & Research Center (CJER)**
Robert Schindewolf, Managing Attorney, Education Division, CJER
Robert Lowney, Managing Attorney, Education Division, CJER
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Contact: Jack A. Urquhart – 415-865-7654

1130 **Lunch**

Taxi from lunch to PLI

1330 to 1640 **Meeting at the Practicing Law Institute**
John M. Mola, Director of California Operations
685 Market Street, Suite 100
San Francisco, CA 94105
415-498-2801

Return to Grand Hyatt by taxi

Thursday, August 7 – 1 interpreter (consecutive)

Interpreter (Ganzorig) leaves for Washington ,DC (he had stayed at his own expense but not participate after Tuesday)

Taxi or BART to CEB in Oakland

TBD **Meeting at Continuing Education of the Bar (CEB)**
Pamela Jester, Director
300 Frank H. Ogawa Plaza, Suite 410
Oakland, CA 94612
Contact: Suzanne Good – 510-302-0720

Return to Grand Hyatt

1830 to 2030 ABA Judicial Division Welcome Reception (BRING PHOTO ID)

US Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA

The American Bar Association Judicial Division has graciously invited Dr. Amarsanaa and Dr. Mendsaikhan to attend their opening reception and entertainment.

Friday, August 8 – 1 interpreter (consecutive)

Action Planning Session – meeting held in M. Edwards hotel room

Closing Dinner – location TBD

1830 **Interpreter (Chimgee) leaves for Denver**

2230 **Taxi to Airport (Dr. Amarsanaa)**

Saturday, August 9

0100 **Depart San Francisco – United Airlines 4665**

1700 **Arrive in Seoul**

Sunday, August 10

1210 **Depart Seoul – MIAT 302**

1540 **Arrive Ulan Bator**

Attachment H

Draft (26.9.2003)

LEGAL EDUCATION STRATEGIC PLAN OF THE NLC

One. Prime goal

The prime goal of the NCL is to set up a democratic, steady, effective system of continuous legal education for lawyers, to conduct quality trainings to meet the needs of lawyers and to support the development of an independent, fair judicial system.

Two. Tasks to be accomplished to attain the prime goal and guidelines for their implementation.

1. Continuous legal education (CLE) shall be conducted for the entire period of it's legal activity

1.1. to reflect in the laws the obligation to attend mandatory trainings for lawyers (judges, advocates, prosecutors) and to develop a cycle of mandatory trainings for officers of judiciary organizations. If it can not be incorporated into related laws, to announce it as a moral duty for all lawyers or develop standards of education for lawyers as part of the internal policies of any judiciary organization.
1.2. to develop a long term training programs consisting of various interconnected subjects to ensure the continuity of training courses.
1.3. to develop qualification tests for lawyers
1.4. to develop selection criteria for certain positions in the judiciary and prosecutor's offices and to tie the curriculum to those criteria.
1.5. to develop jointly with the GCC the selection stages and selection methodology in the process of special trainings.
1.6. to set up a mechanism for granting certificates and ranks for those judiciary officers who have passed professional exams based on successful completion of the training and re-training programs
1.7. to create official and unofficial conditions and need to inspire lawyers to continuous study.

2. The system of the continuous legal education should be realistic and achievable

This system should realistically reflect the current political and economic situation and future prospects and should gain support from the major judiciary organizations, namely the Ministry of Justice and Home Affairs, the General Council of Courts, courts, the General Prosecutor's Office and the Advocates Association. Besides, it should be able to meet the requirements of the legal reforms and be based on the needs of lawyers to improve their professional knowledge and skills through training. Only then this training system would become realistic.

2.1. to ensure mutual understanding and cooperation among all related organizations on the NLC, to choose the right forms of mutual interrelation between the management of these organizations and the NLC, to determine the appropriate division of responsibilities and to sign a document on mutual cooperation (sing a contract).
2.2. to turn the NLC into an inter-agency organization that bears the responsibility for conducting legal trainings for their needs.
2.3. to reach a unified understanding on financing the activities of the NLC
2.4. the NLC shall be a training agency that conducts trainings at the order of legal agencies.

2.5. to design training curricula for long term (4-year) and short term (1-year) periods of time based on the needs of lawyers.
2.6. within the framework of the legal reforms to ensure flexibility in organizing special trainings on newly-approved laws, draft laws under discussion or resolutions or on any issues of urgent importance
2.7. to develop a system for timely informing the officers of the judiciary organizations of any newly approved laws.
2.8. to set up a mechanism aimed at reaching a unified understanding among judges on new ways in the Criminal Procedure Code on handling cases or resolving disputes.

3. The system of the continuous Legal Education shall be democratic

It is essential to actively involve lawyers in the process of design, planning, conducting and evaluating trainings for lawyers. This is of great significance for increasing a possibility to reflect the needs of lawyers, to raise trust and understanding among the trainees, thus gain their support. Besides, this would ensure the independence of lawyers training process.

3.1. To this end to set up committees on the training of judges, on training of prosecutors, on training of advocates, to develop a policy of encouragement of their activities and improvement of their decision-making process.
3.2. to define the working conditions and bonuses for the Committee members.
3.3. to create a condition for reflecting the opinion and orders of legal organizations on the NLC in the decisions of the Centre management.

4. The system of the CLE should be consistent

The legal organizations of Mongolia should develop a mechanism for operation of this education system independently, without foreign assistance, with their own forces. The creation of a system that is able to operate independently and conduct training programs would ensure the consistency of the CLE system.

4.1. to set up a small, able and creative structure at the NLC to operate the CLE system.
4.2. obtaining support from the Government budget, and conducting training courses by the order of the Government should ensure the reliable financing mechanism.
4.3. Conducting special programs for paid trainings to meet the needs of lawyers shall create a source for additional funding.
4.4. to clarify the legal status of the CLE system with a view to turn it in the future into a form of public legal education body.

5. The CLE system should accessible

It is essential for Mongolia with its vast territory, low density of population, expensive communication and transportation means to ensure equal opportunity for every lawyer to access training courses with no regard to the position he/she is occupying or place of his/her residence. Besides, the training courses hall be aimed at increasing the theoretical or practical knowledge not only in the area of law, but also the areas not related to laws.

5.1. to ensure conditions that attending training courses shall not be dependent on a decision of any official.
5.2. to create a fund to support the rural lawyers to attend trainings in the capital city.
5.3. to conduct trainings for rural lawyers on a regional or local levels.
5.4. to support local legal organizations in organizing training courses internally

5.5. to use various forms of training such as a distant learning, learning through internet, or phone system
5.6. to offer a broad scope of training subjects, such as management, psychology, economy, accounting, computer and internet and reflect them in the related training curricula.

6. The CLE system shall be independent, fair and be aimed at contributing to the development of a business-like judiciary system

6.1. to include issues on lawyers ethics in the curricula for training and re-training courses.
6.2. to constantly enrich the curricula of training courses on ethics and communication psychology.
6.3. to conduct trainings on the management of criminal procedures, information and marketing aspects of the activities of the judiciary organizations.
6.4. to develop hand-outs and conduct trainings on legal education for the general public that would increase their trust in judicial organizations and their representatives and increase the possibility of gaining their support and a possibility for cooperation.

7. Priority task

The Priority task of the CLE system is to provide trainings to meet the needs of lawyers.

7.1. The following factors would influence the quality of training for certain group of lawyers:

A/ Class training
- Selection of a topic
- Type and form of the course
- Learning environment
- Trainer
- Classroom, equipment /2 classrooms for 30 and 60 trainees, a classroom for training of trainers/
- Methodology for adult learning
- Content of a training course, form and technology /to provide a methodology guidance for trainers on lesson planning in advance/
- Training handouts
- Training course duration
- Cost of training program
- Technical conditions
- Relations with trainees and trainee support

B/ Distant/Independent education:
- Selection of a topic
- Training handouts
- Training course duration
- Cost of training program
- Technical conditions
- Relations with trainees and trainee support

7.2. The following evaluation criteria shall be used:
- Whether new skills needed for the work has been learnt
- Whether there is a response to urgent and new legal questions, whether new knowledge and information on evaluation or assessment have been supplied
- Whether there is a support in correct understanding of new or revised laws within the framework of legal reforms
- Deeper understanding of lawyers' ethics

- Whether it was able to generate interest and active participation of the trainees

7.3. The issues to be focused at while developing a policy on training management:

- Quality and effectiveness of the training course
- Detailed study, analysis and evaluation of training needs of lawyers /purpose of evaluation, scope, methods for revealing the needs, evaluation tools, resources and management methods/
- To create a reliable information and advertisement channel
- To create official and unofficial favorable conditions for voluntary and free attending of training courses by lawyers
- To consolidate the training segments aimed at self-funding
- To set up a system for training and encouraging trainers

7.4. To develop a systematized, multi-level, unified training program. The following shall be the main areas of the unified training program:

- Ethics of lawyers, communication psychology, negotiating skills, lawyer's skills (management, economy, accounting, filing and stylistics of official correspondence)
- Contracts, damages, family (immobile property, land, nature and environment, natural resources)
- Business law (management, banking and finance, labor, social care, insurance, taxation)
- Criminal law, criminal procedures, civil process (adversary principle, theory of proof, case management and trial management, alternative ways of dispute resolution)
- Special training programs for judges, prosecutors and other groups of lawyers.

Three. Grounds for activities, legal environment and ways to perfection and consistency

Legal acts regulating legal education for lawyers and the legal education activities of the NLC:

1. As it is indicated in the Charter of the NLC "the main responsibility of the NLC is to organize legal clinical trainings and training and re-training courses conducted at a very high professional level, compatible with international examples and aimed at providing business knowledge, improving professional skills and knowledge or acquiring new professional skills and knowledge to Lawyers (judges, prosecutors, advocates, legal counsels and notaries) on the creation of a unified understanding of any changes or amendments to the Laws and regulations of Mongolia, the principles, content, goals and grounds for application and forms and methods of Laws.
   The national Centre of legal acts, judiciary research, training, information and promotion (National Legal Education Centre) was set up by the Resolution #121 of 2002 of the Government of Mongolia and the order #222 of 2002 by the MJHA that approved its Charter and organizational structure.
2. Currently under the above-mentioned Charter the NLC operates within the framework of the functions of the Minister of Justice and Home Affairs. In future a proposal should be developed to change this status.
3. This strategic plan shall be implemented in coordination with the Strategic Plan of the Judiciary system. Besides, it would be appropriate to take into consideration of other strategic plans and policies, especially the "Judicial reform of Mongolia" which was adopted by the Great Hural in 1998.
4. The NLC shall fall under the "other training organizations" category mentioned in the Article 18 of the Education Law approved on May 3, 2002.
5. It is planned to conduct special training courses for judges on various topics based on the agreement with the GCC and a memorandum to be signed with it. Besides the judges should be encouraged to attend other training courses organized for all lawyers on a voluntary basis and free of charge.
   The provision 41.1 of the Law on Courts of July 4, 2002 says that "the judges of all instances shall have the right to attend annually training and re-training courses for not less than 14 days with a purpose to improve their professional skills". The provision 2 of the same Article says that "it shall be the responsibility of the General

Council of Courts to organize such training and re-training courses." Besides, the provision 65.5.5.of the same Law entrusts the offices, departments and section of courts with the responsibility to organize trainings and supply information to judges on laws and regulations and other necessary information.

6. Trainings for prosecutors can be organized directly be the NLC, and it is appropriate to agree with the General Prosecutor's Office on organizing special trainings for prosecutors.
   It is indicated in the provision 48.1. of the Law on Prosecutor's Offices that "the Government shall be responsible for staffing, training and re-training personnel for the Prosecutor's offices".
7. Trainings for advocates can be directly organized by the NLC, and it is appropriate to conduct them jointly with the Mongolia Association of Advocates.
   The provision 15.4 of the Law on Advocacy mentions that "Re-training of advocates shall be a responsibility of the central Government administrative body in charge of legal issues".
8. Special trainings for notaries may be conducted by the NLC at the order of the Chamber of Notaries.
   In accordance with the amendment of May 23, 2002 to the Law on Notary (Provision 7.1.2. of the Law on Notary) the "Chamber of Notaries is entrusted with a responsibility of training, re-training of notaries".
9. Court decision enforcement officers shall be able to attend NLC training courses voluntarily or those that are organized by the request of the Court Decision Enforcement Department.
   In accordance with the provision 6.1.1. of the Law on Court Decision Enforcement "the General Department of Court Decision Enforcement is responsible for personnel policy development, training of staff and improvement of their knowledge and skills".
10. Police officers shall be able to attend training on a voluntary basis or those that are organized by the request of police departments.
    In accordance with the provision 9.5. of the Law on Police "the General Department of Police is responsible for activities with regard to personnel policy development, training of staff and improvement of their knowledge and skills".
11. It is also possible to organize training courses for legal counsels and staff members of government agencies and business entities based on their needs assessment.
12. Law on Selection of Lawyers

Four. The scope of clients and joint cooperation partners in the CLE

1. Lawyers, staff of judiciary organizations shall be the main group of clients for NLC. 360 judges, 360 prosecutors, 800 advocates, , a total of 1520 lawyers, plus notaries and lawyers working for government agencies and business entities and graduates of law schools applying to take lawyers' selection exams are all potential clients.
2. All judiciary organizations, namely courts, GCC, General Prosecutor's Office, Mongolian Association of Advocates, law firms, advocates firms, the Chamber of Notaries shall be partners and clients that order special trainings.
3. The NLC shall report to the Minister of Justice and Home Affairs.
4. The NLC shall cooperate with Law institutes and Universities, the Research sector and Information and Promotion centre of the NLC, the Judicial Research Centre of the Supreme Court and other law research centers.
5. The Sub-committee on training of judges, prosecutors and advocates shall be the main advisors for the CLE program.
6. The professors and lecturers of law schools, lawyers working at judiciary organizations, scientists in the area of law and other areas, researchers and professionals will act as trainers of the NLC.

Five. Cost estimation for the implementation of the Strategic Plan and sources of financing

1. Main work force
   - Managers of training programs (5)
   - A specialist in operating and maintaining teaching equipment
   - A secretary in charge of activity coordination, information exchange, correspondence
   - An advisor of a program

- A trainer

2. Training facility, equipment
3. Training manuals, handbooks, a law resource library, a library, internet
4. A reliable source of financial resources
5. Management and its structure
   - A person in charge of the Training Centre or a General Training Manager
   - Managers of training programs
   - Office staff

Six. Activity plan (matrix) (attachment)

Activities to accomplish the prime goal
(See the Strategic Plan)
Methods for implementing the goal
(Activity plan, person responsible, cost estimation, foreign assistance)
Methodology for evaluation of the implementation process
(Up to the year of 2008, results, monitoring indices, evaluation period)

Comments on the
LAW ON UNDERCOVER WORK (LUW)
Effective December 19, 1998

General Comments:

Every response to crime must conform to the basic principles of democratic states governed by the rule of law and be subject to guaranteeing respect for human rights. The Mongolian constitution along with other Mongolian laws, and the many international treatise Mongolia is party to, such a the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are devoted to supporting a pluralistic democracy, the rule of law and the protection of human rights.

Democracy, the rule of law and human rights are a set of principles and standards that may not be departed from, not even in efforts to respond to crime. These three areas set the limits to what society is entitled to do in fighting crime. The LUW recognizes this in Art. 4.

The use of the undercover techniques is essential to the detection, prevention and prosecution of certain crimes, such as white-collar crime, public corruption, terrorism, organized crime and offenses involving controlled substances. These techniques involve an element of deception and may require cooperation with persons whose motivation and conduct are questionable. That is why they need to be carefully considered and monitored.

The undercover legislation has to balance the need for undercover investigations and protection of civil liberties. In order to achieve this balance the undercover law needs to express exactly under which conditions which types of investigative methods can be applied. Generally the more serious the crime to be investigated, the more invasive the investigative methods can be. But this also means that undercover investigations are not permissible for detecting low-level crimes or when evidence can be collected without the use of undercover methods. The fact that undercover methods infringe upon individual rights using elements of secrecy and deception also requires strict adherence to procedural laws and an approval and supervisory process that ensures independent review of the request for such actions.

Article 3 and 4 of Taiwan's recently introduced Undercover Law provide a good example for balancing the investigative needs with proper protection of individual rights. Art. 3 states that, "Undercover operations may only be used in cases where the following three criteria are met: There exist sufficient evidence to show that the suspect may have violated one of the following enumerated crimes, there exists a serious danger to national security or social order and it is difficult or impossible to collect evidence or fully investigate the case in conventional ways." The list of crimes for which undercover investigations are allowed are limited to the Taiwanese equivalent of felonies, or crimes punishable by more than three years imprisonment. Article 3 thereby limits such operations to only the most serious crimes. Further protection of civil liberties is provided by Article 4, which states, "Only first-level judicial officers

may apply for permission to conduct undercover investigations, and such applications must be approved by the highest supervisory level in that agency. If approval is granted, the scope and nature of the investigation must be reported to the district prosecutor before any action is taken." Article 4 creates a system of oversight for undercover investigations.

The Taiwanese Law, like similar laws established in other countries, clearly indicates that undercover operations can be used only in exceptional situations under strictly controlled circumstances. The current Mongolian Law on Undercover work complies with some of these internationally set standards but not with all. It includes a number of provisions that appear to be in conflict with international human rights treaties to which Mongolia is a partner as well as with current Mongolian law, particularly the recently changed Mongolian Criminal Procedures Code. In some instances it further establishes practices that can lead to serious conflict of interest situations for the agencies applying these regulations and that are not following internationally accepted standards of operations.

The main problems of the current law are:

- It is does not specify the types of crimes for which undercover investigations can be used, thereby allowing very invasive operations even for lesser crimes.
- It does not specifically refer to other Mongolian laws that establish the level of suspicion and evidence that has to be shown to begin an investigation.
- It does not make sufficient distinction between different degrees of invasiveness of undercover operations, such as investigations that occur in places and situations that can be easily observed and those that target places or situations that are under special protection, such as private homes, communications between defendants and their attorney, documentations related to medical records or bank accounts.
- The approval and supervision process does not set time limits for undercover operations.
- The law does not clearly state that evidence rules that govern how evidence developed as a result of undercover investigations can be used and when it has to be destroyed.
- Several provisions are too broad to provide clear definitions and proper guidance to the investigators.

Some of these problems may stem from the fact that this law has not undergone a revision after relevant treaties where signed and applicable laws were changed.

Another key problem results from the fact that this law provides authorization for undercover work to a range of agencies that have very different mandates. It applies to the State Security Agency, the Military Intelligence Agency, police and the Court Decision Implementing Agency. While the law, in Art. 9, identifies the situations in which these agencies are authorized to undertake under cover work, the scope of authorities are the same. Considering the very different mandates of these agencies that involve crimes and security situations of

different seriousness and importance to society, it is unusual that the same level of authority to infringe on otherwise constitutionally guaranteed human and private rights is granted across all agencies. International practice is that the authorities given to various state agencies to conduct undercover work differ with the level of security issues involved and degree of potential human and privacy right infringement. Generally, national security issues are considered so elemental that breaches of privacy and human rights may be allowed under controlled situations that would not be authorized in a criminal investigation conducted by police. The government's decision to grant an agency the right to conduct certain types of under cover work is weighted against the need to protect a higher goal or right and the extent to which the undercover work would interfere with the rights of the subject targeted by the undercover work.

It appears that as the result of trying to accommodate the diverse needs of the currently authorized agencies, many provisions are worded broadly, too broadly in many instances to provide sufficient guidance and to protect from human rights abuses or conflict of interest situations.

One indication that the law requires review is that the LUW does not require judicial review of any of the undercover investigative actions. International standards generally require judicial review of search and seizure warrants and of wire taps. Since judicial review of arrest and detention decisions was only recently introduced in the new Criminal Procedures Code of Mongolia, it is not surprising that provisions for judicial review of undercover operations are currently missing, it is, however, suggested that similar provisions are considered at least for certain under cover activities that impose serious infringements on individual rights, such as wiretaps in private homes or those that target political entities or the media.

In addition, the law does not reference any procedural norms that establish how targets of undercover work protect their rights when abused and what venues exist to redress possible grievances.

The following sections provide specific comments on individual articles that reflect the above comments.

Specific comments

Article 2. Undercover work

Undercover work means the search, collection and revision of information, documents and evidences by the authorized government institutions using the ordinary, special and secret methods and means in order to protect the national security, human rights and freedom from unlawful assaults.

Comment: This article limits authorization for undercover work to government efforts to protect national security, human rights and protect from unlawful assaults. It establishes some level of seriousness of the act to be investigated to allow an infringement on a person's rights. This is an important aspect that

needs to be further refined to provide the needed guidance for weighing interventions by the authorized agencies.

The translation is not clear but it appears that no undercover work is possible to pursue many serious criminal acts that do not threaten national security, human rights or not of a violent nature, such as most white collar crimes, including most cases involving corruption. This shortcoming may be a result of the law not really having been adjusted to changing circumstances of law enforcement operating in a free market society and requires adjustment, which can best be achieved by listing the limited types of crimes for which undercover investigations can be authorized.

Article 3. Legislations on Undercover Work

The legislations on the Undercover Work shall comprise the Constitution, the Law on Protection of the State Security, this Law and other legal acts approved in conformity with these laws.

Comment: Since the LUW authorizes significant infringements on human and private rights all pertinent provisions of all relevant laws should be listed in this article. This includes all provisions that spell out constitutional guarantees and procedural safeguards.

Article 4. Principles of Undercover Work

Undercover Work shall be governed by the principles of promoting the national, social, and governmental and citizen's security, respecting the rule of law, justice, equality, human rights and freedom, and the principles of promptness, continuity and confidentiality.

Article 5. General conditions for Undercover Work

Citizenship, nationality, gender, social status, wealth, religion, opinion, job or position of individuals shall not hinder the undercover work executed according to the legal justifications and procedures.

Comment: The intention of this article appears to be equal application of this law independent of the status of the person to be investigated. While this is an important principle this article ignores that certain individuals under certain circumstance are guaranteed special protection from exactly the kind of activities granted investigating agencies under this law, such as attorney-client privileges, or similar protection generally granted to the medical profession and others.

Article 7. Protection of human rights and freedom during the execution of Undercover Work

7.1. Individuals and legal persons considering that their rights and freedom were violated because of the activities of the agencies authorized to perform

undercover work have a right to complain to the relevant higher level authorities, officials and prosecutors.

7.2. In case of violation of citizens' and legal persons' rights, freedom and lawful interests by the undercover agency or its officers in a way of abusing or exceeding the power specified by laws the rights of victims shall be recovered and losses redressed by the institutions and officers mentioned in provision 1 of this Article or by courts.

Comment: This article does not provide for effective means of protecting an individual's rights where rights are abused by a government agency. A person whose rights were violated by illegal actions of the government actors while acting undercover should be able to bring his grievances to court (i.e. in the newly created administrative courts). This is also supported by Article 16(14) of the Mongolian Constitution as well as by the UDHR, Article 8. If complaints can only be filed with the violator's superior or a prosecutor there is a high likelihood that a person whose rights were violated would be reluctant to seek help for fear of retaliation or because no effective action is expected. In addition, this regulation creates potential opportunities for cover-up within the undercover agency.

Article 8. Limitations on Undercover Work

8.1. Usage of any undercover equipment for the purpose of performing undercover work by the organizations, officials or individuals not mentioned in Article 9 of this Law is prohibited.

8.2. Authorized organizations and officials are prohibited to execute undercover work on the basis of justifications other than those prescribed by Article 11 of this Law.

8.3. The undercover agency shall not give to undercover officers, secret undercover officers, helpers and assistants the rights not allowed by laws and shall not assign to them unrelated tasks, and also shall not apply equipment prohibited by laws.

Comments: Article 8.3 needs further clarification. It appears to indicate that officer assigned to undercover work cannot be involved in other activities. While special assignment of undercover officers to focus on this often demanding work is preferable for any agency it may not be practical for smaller agencies outside of Ulaanbaatar and also limits the ability to use undercover agents within an agency.

8.4. Officials mentioned in provision 1 of Article 6 of the Law on Civil Service, the Chairs of the Constitutional Court and the General Election Commission, as well as the President of Mongol Bank, State Secretaries of Ministries and heads of the government regulating and implementing agencies shall not serve as undercover officers, helpers or assistants.

Comments: The meaning of this provision requires clarification. While the individuals mentioned may require special protection from being used for undercover work, their assistance in such activities may be vital. For example, in order to track illegal gains from corrupt activities, the assistance of the President of the Mongol Bank may be required, in order to detect election fraud, the assistance of the Chair of the General Election Commission may be vital. This provisions needs to be reviewed for purpose and clarity.

8.5. Identification cards of members of the Parliament, Cabinet, Constitutional Court and General Election Commission, as well as of judges, prosecutors or advocates are prohibited for use as shielding documents.

Article 9. Undercover Agency

9.1. The following organizations shall have a right to perform undercover work for the below listed purposes:

9.1.1. The State Security Agency has a right to apply external intelligence and counterespionage methods for collection of information relevant to particular policies and activities of foreign countries and organizations and to the protection of Mongolia's interests, as well as for identification and elimination of crimes and criminals prescribed by laws;(This provision was amended on July 8, 1999)
Comment: If this translation is correct, this article provides for overlapping responsibilities for undercover investigations involving criminal acts. In addition, this regulation is unspecific as to what constitutes the "protection of Mongolia's interests" or particular policies and activities of foreign countries and organizations. This statute provides very broad authorities and is vague in establishing limits for executing these broadly defined authorities.

9.1.2. The Military Intelligence Agency can undertake undercover work for the purpose of studying the international and regional military and political situations and possible military threats in order to prevent from and eliminate them; and provide state and military authorities with the relevant information;

9.1.3. The Police can conduct undercover work in order to reveal and eliminate certain crimes other than those mentioned in 9.1.1 of this Law, to identify criminals, who committed these crimes, as well as to search for and identify the missing people, the people, who are considered as dead, escaped accused, defendants or offenders, other persons requested by prosecutors or judges, also lost weapon, arms, explosives, narcotics, poisons and historical, cultural and other valuable items;
Comment: This provision needs to be revised to ensure a proper balance between seriousness of the event and the extent of undercover investigations applicable. First, it sounds as if undercover work can be applied as a preventive measure – "eliminate certain crimes". While the application of undercover activities for preventive measures is internationally accepted it requires more specific rules for the level of

interventions that are allowed for this purpose. Application of undercover strategies for prevention of crimes has to be more restrictive since no violations have been committed and these activities can quickly cross the line to entrapment.

Second, this article further appears to provide authorities to use undercover methods even if no crime was committed in situations where a person is missing, dead or a weapon is missing. While any of these situations may involve a crime this needs to be established first and second the seriousness of the act needs to justify the use of undercover methods (in addition to other criteria that need to be fulfilled for approval).

9.1.4. The Undercover Work Unit of the Court Decision Implementing Agency can apply undercover methods for prevention and elimination of serious crimes such as escape of prisoners, disruption, kidnapping, sabotage, as well as for detection of crimes committed by prisoners before or during the imprisonment, also for arrest of escapees.

9.2. Besides the rights stipulated in 9.1.1 of this Law the State Security Agency shall have the following jurisdictions in order to enforce the laws and maintain confidentiality in implementation of undercover work:

9.2.1. To keep integrated registration on undercover work;

9.2.2. To approve the undercover work procedures and guidelines in accordance with the laws;

9.2.3. To keep registration of wire-taping and electronic eavesdropping devices, which belong to the organizations, mentioned in provision 1 of this Article, and to monitor their usage;

9.2.4. To develop and implement an integrated policy on production, procurement and application of undercover equipment;

9.2.5. On the basis of taking various confidentiality measures to supervise the implementation of undercover work legislations by the military, police and detention authorities, to review the status of undercover work at these organizations and to receive necessary information and documents from them;

Comment: In order to provide for accountability for undercover operations it is important that these activities are tracked and monitored. At the same time, making undercover work of all agencies authorized to conduct such activities dependent on approval of this agency undermines the independence of these agencies as well as the need for confidentiality of these activities. The centralized control over undercover work was reasonable when all undercover activities were restricted to agencies within the executive branch. Since Mongolia has taken steps to establish investigative authorities that are independent of the executive branch for certain crimes that bring Mongolia into

compliance with international law and standards, the centralized control of the State Security Agencies no longer fits. This article can compromise the confidentiality of undercover operations conducted by independent investigative units.

Further, to conform to international practices and increase accountability reporting of overall undercover activities by each agency should be made to Parliament, not another executive branch agency.

9.3. To implement undercover activities independently or collaboratively as prescribed by the laws, and to receive assistance from individuals and legal persons.

9.4. While conducting undercover work, to use communication, information, photo, video, audio and other equipment that is safe to human life, health and the environment.

Article 10. Undercover documents and other tools

10.1. Undercover documents and other tools denote the documents, names, addresses and uniforms, which are used in order to shield the activities, premises, properties and means of transportation being used by the undercover agency and its officers.

10.2. Undercover documents and other tools are provided on the decision of the head of the organization conducting the undercover work.

Article 11. Justification for Undercover Work

11.1. The external intelligence, counterespionage and military intelligence activities shall be conducted by the authorized agency in accordance with the state policy on protection of Mongolia's national security and on the basis of information possessed or received. (This provision was amended on July 8, 1999)

11.2. The Police shall conduct investigative activities in case of existence of any of the following justifications:

11.2.1. If it is impossible to review using the ordinary methods the information about the crimes mentioned in the laws that were committed in secret or attempted;

11.2.2. If it is impossible to identify the criminals using other methods;
Comment: It needs to be specified what proof would have to be brought by the investigating agencies that show that ordinary investigative techniques cannot yield the information needed.

11.2.3. If judges, prosecutors or investigators make request in order to review in full the criminal case evidences;

11.2.4. If organizations or individuals make request about releasing hostages or finding missing persons, or on the basis of the facts possessed by police;

11.2.5. If organizations or individuals make request for finding the documents or items mentioned in provision of Article 12.1.5 of this Law;

11.2.6. If foreign countries and international organizations request for legal assistance on criminal matters.

Comment: This article needs revision in two aspects:
First, these requests alone are not sufficient grounds to authorize undercover investigations. Following international standards, the deciding factor has to be the seriousness of the alleged crime, the level of suspicion, and convincing arguments why regular investigative activities cannot yield the needed information to build a case.

Second, if an independent investigation unit is authorized to conduct undercover investigations the division of responsibilities under this article needs to be clearly defined.

11.3. The State Security Agency, while reviewing the information about the crimes under its jurisdiction and while making case inquiries, can conduct investigative searches on the basis of justifications mentioned in provisions 1,2,3,5 and 6 of Article 11.2 of this Law.

11.4. The Detention Authority can conduct investigative searches among prisoners in order to implement the goals mentioned in 1.4 of Article 9 and for the purpose of arresting escapees.

Comment: Following international standards and theories, convicted criminals have forfeited certain privacy rights and are considered to be under supervision that allows for stricter control of their environment. At the same time, certain items, such as correspondence and other communications with the prisoner's attorney, are protected, and can be the target of investigative searches only in exceptional cases, such as terrorism or other acts that threaten the nation's security.

11.5. Undercover work can be done for selection of undercover officers and assistants, revision of officers in charge of keeping the state secrets and for issuance of the State Security Agency conclusions regarding the requests from the individuals, who asked for Mongolian citizenship according to Article 20.4 of the Law on Citizenship.

Comment: Again, some balance between the invasiveness of the undercover intervention and the need for information has to be established. It appears excessive, and not in compliance with international practices, to conduct observations, wiretaps and similarly invasive investigations targeting those who request citizenship if no indications of criminal wrong doing or other threats to the country are established.

Article 12. Framework of Undercover Work

12.1. Undercover work shall be limited by the following framework:

12.1.1. External intelligence work for the purpose of finding the information important to the policies and activities of foreign countries and organizations and for protection of Mongolia's interests. (This provision was amended on July 8, 1999)

12.1.2. Counterespionage conducted in order to reveal espionage or sabotage against Mongolia done by foreign countries, organizations, citizens or their representatives and for the purpose of detecting, preventing and eliminating the crimes under the jurisdiction of the Intelligence Agency;

12.1.3. Investigative search work that aims to detection and elimination of crimes other than those mentioned in 1.1 and 1.2. of this Article;

12.1.4. Arrest of escapees, release of hostages and search for missing people or the persons, who were considered as dead;

12.1.5. Search for lost secret documents, properties, weapons, arms, explosives, poisons, radioactive substances, narcotics, items of historical and cultural value and hidden assets;

12.1.6. Search for evidences needed for case registration, investigation and court procedures.
Comment: Articles 12.1.3 through 12.1.6 provide very broad authorities to conduct undercover work. This article needs to balance the seriousness of the event with the invasiveness of the investigation.

CHAPTER THREE
JURISDICTIONS OF THE UNDERCOVER AGENCY AND ITS OFFICERS, AND FINANCING OF UNDERCOVER WORK

Article 13. Jurisdiction of the Undercover Agency and its Officers

13.1. The Undercover Agency shall implement the jurisdictions allocated by laws through its full time officers (hereinafter "undercover officer"), secret undercover officers, assistants and helpers (hereinafter "assistant officer").

Comment: The law needs to specify the meaning of assistants and helpers. More importantly, international practice is to impose significant restrictions on the authorities that can be given to assistants and helpers and place them under the control of full time agency staff. For example, the authority provided under Art. 13.2.3 is generally not transferable to mere "helpers". These provisions should be reviewed for limited applicability to non-full time staff.

13.2. The Undercover agency and its officers shall have the following rights:

13.2.1. To conduct undercover work based on the justifications provided by the laws, including the provisions of Article 11 of this Law;

13.2.2. To use, in case of necessity, the premises belonging to organizations and individuals, means of transportation, communication and media outlets paying adequate charges;

13.2.3. To enter freely into the dwellings of organizations or individuals and check citizens' identification documents on the ground of suspicions that the accused, defendants, criminals or escapees, whose cases are being solved by the case inquiry and investigation agencies, courts and prosecutors' offices;
Comment: This article generally authorizes an undercover agent to enter a dwelling of an individual or organization's premises without a warrant and without establishing the circumstance under which this can be done. This provision conflicts with international standards protecting private dwellings (which, in many countries is extended to business premises) and seems to conflict with the Mongolian Constitution (Article 16(13)) and international human rights provisions (i.e., Article 17 of CCPR and Article 12 of UDHR).

13.2.4. To use shielding documents and other instruments, as well as undercover agencies, for the purpose of covering own work or the activities conducted by executive officers and assistants;

13.2.5. To use or invent for undercover purposes the equipment not prohibited by laws;

13.2.6. To have and use weapon and special devices for the purpose prescribed by the relevant procedures, while performing job duties;

13.3. The undercover agency and its officers shall have the following obligations:

13.3.1. To be responsible for readiness of the tools and equipment needed for implementation of the power prescribed by laws;

13.3.2. To take prompt measures to prevent attempted crimes against the national security or reduce the negative consequences of the crimes that were reported to the relevant agencies;

13.3.3. To keep register on the use of undercover equipment and the number of undercover activities, and to create an information database;
13.3.4. To protect security of undercover officers, and to prevent them from attacks that may be taken in connection with their job duties;

13.3.5. To keep confidentiality of information being checked, to avoid using the information obtained through the undercover sources for personal or political benefits, and to avoid pushing others to commit crimes while conducting undercover work;

Comment: The last part of 13.3.5 "to avoid pushing others to commit crimes while conducting undercover work" requires more specification. Clear limits need to be established between operations that allow the undercover officers to pose as potential targets for criminal activities, i.e. to set up sting operations, and operations that would represent entrapment. The ability to set up sting operations is essential for uncovering organized crime and corruption cases as well as many white-collar crime cases.

13.3.6. To protect strictly the state secrets relevant to the undercover work;

13.3.7. To exchange information and cooperate with other undercover organizations if needed;
Comment: Considering the secretive nature of the information collected more detailed guidance needs to be developed for the sharing of information among agencies.

13.3.8. To conduct the undercover work according to the legal procedures and justifications, to avoid violating the legal procedures on liquidation of the case files and documents, and to maintain the archives according to the laws;

13.3.9. To utilize the funding for undercover work in accordance with the procedures and to provide with timely reports on disbursement of funds;

13.3.10. other duties prescribed by laws.

13.4. Enterprises, organizations and their officials are prohibited causing obstacles in the work of undercover agency and its officers.

Comment: In order to be enforceable this provision needs to be couple with the possibility to impose an administrative fine on those who willingly and knowingly impede undercover operations.

Article 14. Employment of helpers and assistants

Comment: Overall Art.14 provides insufficient guidance for using helpers and assistants. This section requires more detail or at least the requirement to establish detailed policies for the recruitment, management, and payment of helpers and assistants by individual undercover agencies.
14.1. The undercover agency can employ all eligible persons upon their personal consents, except the officials prescribed by provision 4 Article 8 of this Law, as helpers and undercover work assistants with no regard to their citizenship, nationality, language, race, age, sex, social origin, position, wealth, job, religion, opinion and education levels.

Comment: While this article expresses that selection of helpers and assistants should be based on equality guidelines for their selection should be developed, for example individuals under the age of 18 should not be considered. Overall

the selection and supervision of helpers and assistance requires significantly more explanation and detail.

14.2. Helpers and assistants shall be employed on the basis of conclusion of written contracts.

14.3. Helpers and assistants shall be involved in the revision of cases only upon the written contracts, which should clearly stipulate their rights, obligations and.

Comment: Generally helpers and assistance should only be involved in the development and presentation of evidence, not in decision-making processes related to the case.

14.4. Helpers and assistants shall not be employed by more than one undercover agency.

Comment: This article should be reviewed for practicality. Limiting employment to one agency as the same time may be desirable to ensure confidentiality of the operations but it does not appear to be practical if this requirement extents beyond the duration of the operation the helper or assistant has been involved in.

14.5. Helpers and assistants shall implement the tasks given in accordance with the laws by the undercover agency and its relevant officers. If the helpers and assistants consider the tasks to be contradictory to the laws and legal jurisdictions of the undercover agency, they may refuse to perform these duties.

14.6. The undercover officer, who imposed illegal tasks to helpers and assistants, shall take criminal responsibility for abuse of power.

Article 15. Funding of undercover work

15.1. Undercover work shall be funded by the government.

15.2. The income generated by the undercover agency from its economic activities can be utilized for funding of undercover work.

Comment: This provision is not in compliance with international standards and creates a host of problems. There is an implicit threat in giving a state law enforcement agency the capacity to generate income from such sensitive activities as undercover work. Such authority can easily be abused, even if the agency has the best intentions. Information gained from undercover operations can potentially be used to extort benefits and may eventually corrupt operations and agencies. Very strict rules need to be established for reporting eventual income, for accounting for it, and for the potential future uses and expenditure tracking. Particularly the experiences made by US law enforcement agencies applying forfeiture laws to seize illegal profits are helpful to establish processes that ensure that the agencies are accountable for any resources gained during the operations and do not consider the income generating power of individual investigations in their decisions.

15.3. Disbursement of undercover work budget shall be reviewed by the relevant officials, named in 1.2. of Article 7 of the Law on State control and monitoring.

15.4. The distribution and disbursement of undercover work funds shall be monitored by the head of that undercover agency.

Article 16. Legal guarantees for activities of the undercover officers, helpers and assistants

16.1. The State shall be responsible for the losses that may occur in conjunction with the performance of undercover activities to the lives, health, reputation, families and properties of undercover officers, helpers and assistants.

16.2. The State shall be responsible for the losses that may occur in connection to the undercover work to individuals, businesses and organizations.

16.3. Information on employment of citizens as helpers and assistants based on the justifications and procedures provided in this Law shall be a State secret.

16.4. The undercover agency shall reward helpers in accordance with the work results, and pay salaries to the assistants.

Comment: Rewards based on results can create a “bounty hunter” mentality and should be rarely considered.

16.5. Helpers and assistants shall have a right to receive, in case of losing their lives and work abilities while performing undercover work, one time or other allowances equal to those given to the undercover officers in the similar conditions. The families shall receive pensions for the loss of supporters in accordance with the Law on Pensions and allowances from the Social insurance Fund.

16.6. Citizens and legal persons are prohibited to interfere with, create obstacles and make threats to the undercover agencies and their officers performing the work prescribed by the Laws.

Comment: Again in order to make this provision enforceable an administrative fee for interference should be established.

CHAPTER FOUR
EXECUTION OF UNDERCOVER WORK

Article 17. Revision of information

17.1. The undercover agency shall review and address the information collected on the basis of justifications prescribed by Article 11 of this Law, as well as the information and complaints provided citizens and legal persons.

17.2. If the issues in complaints are not within the jurisdiction of the particular undercover agency, the information shall be transferred to the relevant agencies, and the citizens and legal persons, who provided the information, shall be informed about it.

Article 18. Application of the undercover work results

18.1. The information, documents and evidences obtained during the undercover work shall be used for the following purposes only:

18.1.1. To develop the state policy for the interests of the national security, and to perform the duties prescribed by the laws to those particular organizations;

18.1.2. To detect, eliminate and prevent from crimes, search and investigate criminals, collect evidences and identify their sources;
Comment: As in previous articles a distinction needs to be made among the different types of undercover operations that can be applied to certain crimes only; under which circumstances they can be applied; and in particular how evidence can be collected to be admissible in courts.

18.1.3. To introduce the information to the officials, named in Article 19 of the Law on the State Secrets.

Article 19. Opening the undercover case files

19.1. An undercover work case shall be opened on the following grounds, identified during the investigations and studies prescribed by provision 1 of Article 17 of this Law:
Please clarify that the translation of “opening an undercover case” is to be understood as “approval for undertaking undercover investigations”. If actually a separate file is opened this would trigger a range of other issues – which also impacts comments on some of the following articles.

19.1.1. If the suspicion about the crimes or criminal attempts that may cause harm to the national or country’s security was proven;

19.1.2. If the justifications prescribed by Article 11 of this Law were proven.

19.2. The decision on opening an undercover work file shall become valid upon the signature of the Head of the agency, and a relevant officer shall be identified to carry responsibilities on revision of the case.

19.3. Information and documents collected during the inquiry shall not be lost or liquidated.

Comment: While the process outlined for approval for undercover work within each agency is appropriate this article does not reflect the need for

prosecutorial supervision as required by the law nor does it consider potential judicial review of certain undercover activities as addressed above.

Article 20. Closing the undercover work files

20.1. Undercover work on the filed cases shall be complete and the files closed on the following conditions:

20.1.1. The justifications were proven and the criminal cases filed or a decision was made refusing the opening of the case;

20.1.2. The escapees were arrested, hostage released, or the persons that were missing or considered as dead were found, or the lost properties were found;

20.1.3. Results of the undercover work have been utilized for the purposes stipulated by Article 18 of this Law;

20.1.4. The suspected persons died or left forever the territory of Mongolia.

Comment: Considering the very invasive nature of some undercover work that interferes with individual and human rights, it is international practice that certain types of undercover work, such as wiretaps, are approved for only limited time periods. If these time periods run out without having all the evidence established, the approval and review process has to be repeated with generally even higher standards to support extended interference in the privacy of the suspects. If approval is not given the case has to be closed.

Article 21. Protection and maintenance of confidentiality of undercover work

21.1. Information and documents considered as the state secrets shall be accessed according to the procedures stipulated by Article 19 of the Law on the State Secrets.

21.2. The undercover officers and officials with access to the confidential information and documents shall provide written confidentiality commitments when appointed to or dismissed from their positions.

21.3. Officials with access to the confidential information and documents shall sign confidentiality letters before reviewing them.

21.4. Helpers and assistants shall sign confidentiality letters when concluding contracts on the undercover work.

21.5. The persons, who signed the confidentiality letters prescribed by provisions 2, 3 and 4 of this Article, shall be obliged to keep secrets in the confidential information and documents until there become non-confidential according to the laws.

21.6. In case of violating confidentiality of the information and documents criminal and administrative penalties shall be imposed.

21.7. The information, documents and case files mentioned in Article 17 and 19.1 shall be kept in archives until the confidentiality term prescribed by the Law on the List of State Secrets is expired.

Comment: Generally these documents developed during an undercover operation are to be handled just as any part of a file established in criminal cases and should therefore be kept and destroyed according to the rules established for criminal case files. In particular, if the undercover work did not result in sufficient evidence to support a criminal case the evidence collected has to be destroyed within a reasonable time after the conclusion of the unsuccessful investigation

21.8. When the confidentiality term prescribed by provision 7 of this Article expires the undercover work materials shall be liquidated according to the relevant procedures, and the information, documents and case files, which have historical or scientific importance, shall be kept continuously in the archives of the undercover agency.

Comment: Since undercover investigations related to allegations of criminal offenses generally results in information that interferes with privacy rights, such information cannot be kept for "historical or scientific" purposes if the case did not result in a conviction. Even than the file has to be kept and destroyed according to general guidelines established. If a case has "historical or scientific" value, this information must still be handled confidentially.

CHAPTER FIVE
SUPERVISION OF UNDERCOVER WORK

Article 22. Supervision of undercover work

22.1. The President, Parliament Speaker and the Prime Minister of Mongolia shall be informed on activities of the undercover agency.

Comment: Further clarification needs to be provided as to the frequency, timing and nature of the reports to the President, Parliament Speaker and Prime Minister. Considering the confidential nature of these operations the reports involving criminal cases can only be of general nature (i.e. number and type of operations and results) not be of case specific nature. This needs to be clarified here.

22.2. In case of necessity the Parliament and the Cabinet can control the activities of the undercover agency through the units in their structure or the relevant officials.

Comment: Further detail needs to be established about what constitutes a "case of necessity" and what level of control the Parliament and Cabinet can

express. Generally, these entities cannot intervene in individual cases unless the undercover agency abuses its powers.

22.3. The Head of the undercover agency shall implement internal control on the undercover work.

Article 23. Prosecutor's supervision on the undercover work

23.1. The prosecutor's supervision prescribed by provision 3 of this Article shall be implemented by the Prosecutor General and the authorized prosecutors.

23.2. Prosecutor shall control the registration of the special equipment used in undercover work.

Comment: Art. 9.2.3 appears to assign the same responsibility to the State Security Agency creating a potential conflict or duplication of efforts.

23.3. The undercover agency shall receive in advance written permissions from the prosecutor to conduct the following work on the case inquiry and investigation stages:

23.3.1. To monitor telephone conversations;

23.3.2. To control postage;

23.3.3. To search secretly the living premises, offices, means of transportation, goods and carriages;

23.3.4. To conduct surveillance operations;

23.3.5. To use secretly the special audio and video devices.

Comment: International practice requires judicial review of some of the listed undercover operations – such as wiretaps – but not for all surveillance operations. Generally, the more invasive an undercover operation, the higher the standard for external review and approval. In addition, what is currently missing are provisions outlining the level of proof to be provided to support the request and authorization of undercover operations of different levels of invasiveness. Further, time limits for the authorization to conduct these operations have to be established.

Particularly if the special investigation unit under the PG is given the authority to conduct undercover operations this article needs to be reviewed to ensure that no conflict of interest situation is created within the PGO.

23.4. If the operations mentioned in provision 3 of this Article were taken upon the decision of the Head of the undercover agency in case of necessity, the prosecutor's permission shall be taken within 24 hours.

23.5. The prosecutor shall supervise the compliance of the undercover work and the collected evidences with the relevant legal justifications, conditions and procedures.

Comment: There appears to be some overlap with the supervisory authorities if the State Security Agency that needs to be eliminated.

23.6. The prosecutor, who issued permission to conduct the work prescribed by provision 3 of this Article, shall review and address the complaints raised in connection to this work, and can have access to the work results and case materials.

23.7. The prosecutor's permission shall be based on the decision of the undercover agency to perform the activity prescribed by provision 3 of this Article, and this decision shall contain the following information:

23.7.1. Justifications and purposes of the proposed undercover work, information on the person to be investigated, number of the telephone to be controlled, types of postage and communication to be monitored, address of the premises and duration of surveillance, and the equipment to be used;

23.7.2. Explanations on the impossibility of using other techniques to reveal the actions of suspected persons and about the difficulties that may arise during the operations;

23.7.3. Reference on whether this person used to be a subject of undercover investigations in the past;

23.8. Upon the completion of the undercover operations the undercover agency shall report to the prosecutor, who issued the permission.

Article 24. Penalties for the breach of this Law

Organizations and officials, who performed undercover activities in violation of this Law, shall take responsibility under the relevant laws of Mongolia.

Comment: The law should specify what "taking responsibility" means and also establish what the consequences are if a violation is detected or reported. In order to encourage open communication about honest mistakes made during these operations self-reported violations should be dealt with in a supportive disciplinary process when ever possible.

The Future of Judicial Reform

The major laws, the Criminal and Criminal Procedure Codes, the Civil and Civil Procedure Codes, the Law on Courts, the Law on the Prosecutor's Office, the Law on Advocacy and the Law on Court Decision Enforcement, have been passed to reform legal norms and reform the institutions responsible for administering them. What is needed now is implementation.

A. Uniform and Correct Application of Legal Norms

1. Civil and Commercial Norms

While Mongolia has been quick to adopt new standards, it is important that these standards be enforced. Passing laws is the easy part, enforcement is more difficult, especially because it involves changing the way people think and work. It is crucial to Mongolia's economic development that the Civil Code and other laws effecting companies and commerce are uniformly and fairly applied. Unpredictable enforcement of laws will discourage investment. Judges and lawyers can study the text of the laws, but they also need to understand the relationship between the laws and the economic decisions made by entrepreneurs, investors and lenders. These relationships were worked out over many many years in the free market countries. Legal professionals need a better understanding of how a market economy works and how the laws are a necessary support for a prosperous market economy. Mongolian legal professionals need to study the experience of the market economies that have provided input for the laws, particularly Germany and the United States.

A single wrong decision in a commercial case can have terrible impact on Mongolia's economy. Right now Mongolian banks do not lend to individuals and business in ways that are normal in developed market economies because they believe that the justice system will not enforce the loan agreements. A single bad decision can cause lenders to stop all lending in that area. The accumulation of such bad decisions can have a devastating effect on economic development. Likewise, in Mongolia most people will not invest in a company if they do not control the company or have a very close personal relationship with those who control the company. But in developed market economies investors trust that their investments will be safe in the hands of complete strangers because they know that their legal system protects their investments. In America several well known corporate leaders face trial or have been sentenced to jail this year for various crime involving putting their own interests above the interests of shareholders. The trust this creates in corporate honesty is why developed market economies can allocate capital to the most productive use. Mongolia has a low savings rate and must attract capital to develop. Without uniform, well informed and fair enforcement of its civil and commercial laws, development will not progress very far and a market economy will develop much more slowly.

Well researched and well written Supreme Court interpretations will be necessary to insure uniform application of the law. The Supreme Court Research Center staff and the assistants to justices that draft the interpretations need training. The foreign donors that provide assistance in drafting new laws could facilitate this by developing a special module of training in advanced techniques for drafting commentaries and providing expertise in complex concepts of the new laws. This will give the drafters the opportunity to compare the foreign legal practices and use the one compatible for Mongolia. Furthermore the Supreme Court should consider using experts in economics as well as international legal practices when writing interpretations of the new civil and commercial laws.

There will be a need for expertise in certain areas like intellectual property and securities. So far the Legal Retraining Center has offered introductory courses to a large number of legal professionals. While it is important that all legal professionals have some understanding of these areas, a relatively small number of people with a very high level of expertise are also needed. An effort should be made to devise a strategy for intensive training of that small number of legal professionals in these highly specialized areas. Training abroad will certainly be necessary to bring these Mongolian specialists to the highest international standards of scholarship and professionalism.

2. Criminal Norms

The new Criminal and Criminal Procedure Codes go along way to advance Human Rights in Mongolia. There are certain provisions that still could be improved, particularly the length of time that the accused can be held prior to trial. The current provision of a maximum of 24 months detention before trial is longer than international practice. Yet, the more significant problem for the future is the application of the new laws. The police lack the resources for modern forensic investigation. Without these tools most convictions rely on confessions. The consensus among scientific investigators is that confessions are not 100% reliable. Reliance on confessions can result in wrongful convictions. People will make false confessions for a variety of psychological reasons. It has also been the experience that reliance on confessions can cause the police to use improper methods to obtain them. This is not universally true; the Japanese justice system relies overwhelmingly on confessions with very little to suggest that they are improperly coerced. Yet, a country with Mongolia's history of police abuse must take strong measures to prevent reoccurrence of such practices. While the role of the police has changed from that of controlling the population under Marxist/Leninism to that of serving the population in a democracy, the old attitudes and practices will not die away unless something better can be offered to replace them. Therefore it is of great importance that modern police training and modern forensic methods be introduced in the police departments as soon as possible. Soros Foundation has made an important step with its community policing and UNDP has also made efforts, the Government of Mongolia must make a commitment to increasing police budgets to achieve this urgent need.

Mongolia's Constitution and its new Criminal Procedure Code attempt to adopt the adversarial process in some portions of the criminal process. The Criminal Procedure Code contemplates much more responsibility for advocates and a more passive role for judges. However, the advocate and the accused do not have the right to gather and present their own evidence, or even force the police to gather evidence that they think would be relevant. The right to question the prosecutions evidence does not give them the power to fully prepare a case as is done in common law countries. Thus, the investigation stage remains fully inquisitorial and the trial is supposed to be adversarial. However, both because of the habits of the old practices and because the advocates do not fully have the means to develop their cases, judges still feel that they have direct responsibility to question witness to determine the truth. The judges will not be able to adopt their new role for a variety of reasons. Judges are required to read all the files before the trial including police reports and other evidence that in a common law system would not be presented at all. Judges, therefore already have their own opinion about the case before the trial begins. Advocates are not trained in the kind of evidence gathering and case presentations skills that they would need to conduct an adversarial trial, and they do not have the right to do many things. Some aspects of the adversarial system are being adopted in several civil law countries, including France. It is appropriate for Mongolia to utilize the best aspects of foreign systems, but it needs to make sure that the mechanisms that it puts together work in practice. Since there has been a year's experience with the Criminal Procedure Code, it is an appropriate time to analyze the success

of the aspects of the adversarial system that have been introduced and to recommend ways to make the trial process more fair.

Here again well-researched Supreme Court interpretations of the new laws will be important to achieve uniform application. A conference in September on the Arrest and Detention process agreed upon several sections of the law which could benefit from interpretation. Article 58.2 on intent to escape, 59.5 on circumstances not permitting delay, 70.2 revocation or reduction of a measure of restraint, 68.2.2 on escape and the method for calculating certain deadlines specified in the code were all agreed to require some interpretation. These requests for interpretations have been presented to the Supreme Court. In addition a unified manual on arrest and detention procedures and joint decrees on procedures for investigators, prosecutors, judges and court decision enforcement officers was suggested.

B. Institutional Capacity Building

1. Reform of Hierarchical Institutional Structures

The Mongolian institutions that are responsible for the judicial sector are themselves in transition from Marxist/Leninist institutions to those that are consistent with liberal democracy and a free market. Mongolia's history, both as a Marxist/Leninist state and even earlier as its heritage from Manchu domination has led its institutions to be hierarchical. This is understandable, but the move to democracy involves much more than the ballot box, it means that the government institutions that serve democracy should engage in collegial decision making. This transition supports the independence of professionals in all the institutions, not just judges. Every government employee should feel a personal responsibility to defend the rule of law, and not sacrifice that to deference to a superior official.

In the judiciary we can see collegiality in the US in the form of respectful dissenting opinions which demonstrate the independence of all judges on a panel. While such dissents are theoretically possible under Mongolian law, as a practice they do not occur. I am told this is because it is thought it would be disrespectful of the panel presiding judge or that it would confuse the public. These attitudes have to change so that the public comes to respect the independence, strength and security of individual judges. Professional guidance must be given in a way that does not threaten the sense of independence of any judge. The Professional Committee must act under transparent rules involving little discretion so that no judge will need to fear personal or political pressure. Its actions should be transparent and open so that the people also feel satisfied that it is not a threat to independent judges, just intellectually inadequate ones.

All judicial institutions need to improve their management style and institute a "customer service" mentality in their staff. Court staff as well as judges need to learn how to deal with the public with respect for their dignity and rights. This is critical to public support in a democracy. A strategy for training in public administration needs to be designed. Mechanisms for accountability which do not compromise independence need to be in place in all justice sector agencies.

To measure and help promote a "public service" or "customer service" attitude on the part of justice sector officials and staff, feed back mechanisms must be created. National Public Opinion surveys already establish the existence of the problem, but individual courts and prosecutors' offices could establish surveys of those who have used their services in the last

year, anonymous complaint boxes, and other means to identify specific improvements that need to be made in each court and office.

Part of this new management style needs to be more openness and transparency. The transparency is not just with the public, but the sharing of information with other justice sector agencies. The Unified Information System that the World Bank is contemplating will only be worthwhile if all justice sector agencies agree on compatible formats for their data and think about how sharing will benefit them and the justice system as a whole.

2. Reorganization of Institutions to Maximize Efficient Delivery of Services

Serious consideration needs to be given to the organization of certain institutions so that they can do the best possible work with the very limited financial resources that are allocated. A recent workload study has demonstrated that rural Aimag appellate courts have very low caseloads, primarily due to the changed responsibilities under the new procedural codes. There have been suggestions of creating regional appellate courts that would travel to each of the soum courts and hear appeals. Another possibility is to give the aimag courts responsibility for hearing administrative cases, rather than create new courts and appointing additional judges. Either or some combination of such reform is needed to avoid wasteful expense when so many courts cannot even pay for their phones, paper and ink cartridges. In Ulaanbaatar, it has been suggested that the 8 District Courts could be combined into two courts (Civil Court and Criminal Court) and that all judges would specialize in either criminal or civil cases. This idea should be studied to determine if it could deliver justice more effectively and at a lower cost.

3. Transparency and Accountability

Mongolian Institutions still have a tendency to treat all information as a secret unless it absolutely must be made public. This attitude is not uncommon in the world, although Marxist/Leninist countries brought it to an extreme. But, in a democracy, exactly the opposite point of view is required. The people employ the civil servants, their representatives created the institutions under law and they are the "owners" of all public institutions. They have a right to know all the information that these institutions have, unless there are good reasons codified in law and sufficiently demonstrated to keep them secret.

Websites and the upcoming 1st annual report on the courts are beginning to change the culture of secrecy in justice sector institutions, but much more remains to be done. The public access terminals created in automated courts provide the public with information on case processing. In future these terminals should be designed that the general information on court operations and case processing be on the screen of a visual display unit (and change in sequence if it is extensive) and specific information could be obtained by simply pushing the necessary buttons. These workstations should be easy enough to operate without requiring the help of court clerks. This will ensure and promote the customer oriented efficient delivery of services by courts.

The justice sector institutions must think of more and better way to inform the public about what they do. Recently JRP assisted in organizing a workshop for journalists on how to report on the courts. In addition, JRP provided training for public relations officers of the Supreme Court, GCC, the MoJHA and General Prosecutor's Office that focused on explaining the nature of public relations, on how to write press releases/organize press conferences on pertinent issues in order to provide the public and the media with accurate information on the justice system activities. The National Legal Center could provide this

kind of specialized training for PR officers and may coordinate the PR activities of justice sector institutions since one of its mandates is to educate the public about the justice system, its activities and the legislation.

The justice sector institutions need to redesign their statistical information to gather and publish statistics that are useful and interesting to the public. They should make sure that the press has full access to their activities, except those that the law keeps secret. It is no argument that the press may be very bad at writing about the justice sector. It is the justice sector's responsibility to educate the media about its activities.

The success of any reform depends on public support. This is particularly true of judicial reform because public support for the courts is necessary to keep them independent of the elected branches of government. Only popular support for judicial independence will restrain the natural tendency of the other branches of government to strengthen their own power at the expense of that of the judiciary. Public support needs to be built in several different ways. Of course, courts must be honest and effective before public support is possible, but even when they are honest, they must be transparent so that the public can see for itself how the courts work. The nature of litigation is that their will be winners and losers and the loser will often blame the legal institutions rather than themselves. Thus, courts need to be particularly effective in demonstrating that they are impartial. The justice system needs to institute an effective public education campaign so that the citizens of Mongolia understand the role of the courts and how courts protect their rights. Only a citizenry that is knowledgeable about the courts will demand independence for them in the political process. Public education has been funded by donors such as GTZ, JRP and UNDP as well as the MoJHA. The courts and the prosecutors' offices need to be involved in the design of a sustainable public education campaign. Adequate funding and a cooperative approach among justice system agencies will be essential to public education and the resulting public support.

An extremely important part of transparency is opinion writing. In America it is said that a judge should only speak publicly through his/her written opinions. Court decisions must be clear. If the basis upon which a judge made his/her decision is clear to the parties, even the losing party will have faith in the justice system. The public at large will have confidence that judge's do not act on prejudice, personal favor or corrupt motives if the opinion is written so clearly that everyone can see that the decision was the only one permitted by the law and the facts. Mongolian decision making falls far short of this idea. Opinions are often confused with incomplete records of the evidence and limited analysis of the application of the law. If the public cannot understand the written opinion, they usually assume that the judge deliberately wrote it badly to hide an improper decision. It is urgent that Mongolian judges improve the quality of their written opinions as soon as possible.

All decisions of the higher courts should be published, both to encourage the judges to write them as well as possible, and so that their quality can be used as a means of teaching other judges. GTZ and JRP have announced a contest for the best written opinion in each court and for the country this year. Prizes and certificates will be awarded for each court and for the national winners. It is hoped that these measures, along with training will cause judges to improve the quality of their opinion writing.

Transparency in ethics and discipline is vital to securing public support for the judicial system. The operations of the Disciplinary Committee and the Professional Committee must be in accord with published procedures and criteria and must be in every possible way open to the public. This kind of transparency builds the confidence which not only leads the public to believe that dishonest or incompetent judges are eliminated from the system; but also that

judges who remain on the bench or who are investigated but are exonerated are in fact fair, honest and competent.

The Disciplinary Committee should work closely with the Special Investigative Unit reporting to the Prosecutor General. While they have developed some protocols for cooperation, in cases that can fall into both of their jurisdictions, the Disciplinary Committee should take advantage of the greater investigation resources of the Special Unit. Then, even if a criminal case is not brought, the case may be appropriate for judicial discipline.

All justice sector agencies need to improve their administration and management. This will require that they determine and document their goals and objectives and then develop strategies to achieve them. These strategies must delineate the duties of those who are responsible for achieving these goals. Workload studies and revised job descriptions are necessary to make sure that the assignments of responsibilities are realistic and can be carried out. Adequate budget resources should be calculated and presented to the government so that they are justified and the institution can be held to the outputs in return for the budget allocation.

In most government organizations in the United States, published manuals of practices and procedures are created to govern the operation of the organization. These manuals serve the purpose of making sure the organization is consistent in the treatment of the public and that the officers of the organization do not abuse the discretion they have in performing their duties. These procedures can be made public to ensure transparency and public trust.

C. Judicial Independence

Both Uniform Application of Legal Norms and Capacity Building are necessary for judicial independence. Improved judicial management style is vital. But adequate salary and administrative budgets are also required. One of the greatest guarantees of independence is financial security. Clearly wages must be increased for a variety of reasons. But another form of financial security is the knowledge that judges, prosecutors and other government legal professionals have in developed market economies that they are able to leave public service and earn a decent living in the private sector. Thus they are free to speak without fear. Barriers to the employment of judges and prosecutors in private practice should be eliminated to encourage this kind of independence.

There will be no judicial independence and no rule of law until the courts are adequately funded by the government. Adequate funding will be assured when the public has confidence in the courts and supports them. This will be impossible so long as the public suspects that courts are corrupt. Public opinion surveys reveal that the public does not fully trust the courts. The courts must earn the right to public funding by being fair and impartial and transparent. When they are, the public will support funding. But, the government must make an investment now in the Rule of Law and provide sufficient funding to promote the reforms that have been initiated.

Improved ethics and the perception of improved ethics are vital to securing popular support for adequate budget allocations. Collegiality in the work environment will demonstrate that judge feel themselves to be independent. A great commitment must be made by Mongolia to achieve all of this. The government must provide the budget, but the judicial sector must prove it is worthy of increased resources by reforming itself.

CONCLUSION

Adequate budgets are the single most important element to sustaining judicial reform in Mongolia. But, justice sector agencies must be able to defend their budget requests with well developed plans to achieve specific objectives that will allow the government and the people to hold them to those outputs in return for budget allocations.

Training is an important means to further Judicial Reform and indeed it cannot be over emphasized. But training by itself brings no change. People must be motivated to change and they must understand the "big picture". That is legal professionals must understand how their work is essential to human rights and economic development. They must see that changes in the way that they have done their jobs are essential to make sure that Mongolia is the prosperous democracy that everyone wants it to be. This is a process of changing minds. It is not an easy task; it is one which every legal professional needs to take individual responsibility for. I can tell you that having worked in parts of the former Soviet Union, Mongolia has already made wonderful progress. It is a task that I am very honored to have the opportunity to contribute to.

Issues in Combating Judicial Corruption in Mongolia[1]

Introduction:

Corruption has come to be recognized as a serious threat to economic development and democratization in many developing and transitional countries. There can be no doubt that Mongolia suffers from corruption. Its importance was recently emphasized by the 2002 Consultative Group Meeting (July 8-10, 2002 in Ulaanbaatar). The Government of Mongolia's Good Governance for Human Security Programme: Support of Anti-Corruption Activities with support from UNDP/Mongolia held a National Conference on Anti-Corruption to build a national consensus on the ways and means to combat corruption among the key stakeholders (March 27-28, 2003 in Ulaanbaatar). Mongolia is a signatory to the ADB OECD Anti-Corruption Action Plan Asia Pacific, designed to coordinate and assist the fight against corruption in the Asia/Pacific region. Both government and NGOs from Mongolia participated in the 11th International Anti-Corruption Conference (in conjunction with Transparency International) and the Global Forum III Anti-Corruption Conference in Korea this year

This paper focuses only on judicial corruption, rather than corruption in all sectors of Mongolian society. However it is difficult to separate the corruption of judges from other corruption in the wider justice sector (police, prosecutors, bailiffs who enforce judgments, etc.), since they all frustrate the goal of achieving the Rule of Law. Overcoming corruption in the Justice sector is a key to combating corruption throughout society. Without an honest criminal justice system, the wealthy, including the corrupt, can avoid the consequences of their crimes. Such impunity reduces the perceived cost of corruption. The risk that corrupt activity will result in imprisonment and accompanying public humiliation is minimal. The gains from corruption are thus not discounted and there is little reason beyond personal integrity not to engage in corrupt acts. That this may be true in Mongolia can be seen from the fact that their have been no convictions for judicial corruption in Mongolia since the transition began in 1991.[2] Reducing corruption in the justice sector would make it more likely that corrupt individuals in other sectors would be prosecuted and punished.

Measurement of corruption

It is impossible to measure corruption accurately. Those who give and receive bribes have every incentive to hide their crime. Public perceptions of corruption provide some guide to the level of corruption, but they are not exact measures. In 1999, Transparency International ranked Mongolia 43 out of 99 countries in terms of corruption with 1 being the least corrupt and 99 being the most corrupt. So, Mongolia may not have a problem as bad as some other countries, it still has a problem.

[1] This paper does not represent USAID policy. The author is solely responsible for its content.

[2] There have been 456 criminal investigations of abuse of authority in the 2 years prior to 2002, of which 250 were taken to court and the rest dismissed. (Source: Interview with T. Sukhbaatar, Associate Prosecutor General, Head of Supervision of the Investigation Department, June 6, 2002.) Abuse of authority may involve corrupt acts, but does not require proof of bribery. Likewise, within the court system, there have been disciplinary actions against judges for "professional mistakes", which include decisions that are so obviously contrary to law that they may be the result of corruption. In 2000 and 2001, 37 judges had disciplinary cases filed against them: 9 resulted in a reduction of salary, 17 resulted in a warning, 3 resulted in a warning before other judges, and 8 were dismissed from their position. (Information from Damiransuren, Justice of the Supreme Court.)

There is a strong correlation between wealth and democracy and ranking in corruption. I think causation flows both ways. More middle class citizens tend to be politically astute and active. They are better at demanding action against corruption than the abjectly poor. Democracies punish corrupt governments in elections which provides another powerful corrective. But it is also clear that corruption retards economic growth and undermines democracy.

Mongolian Survey results yield some interesting results:

In 1994 a survey was published by the Academy of Sciences and the Konrad Adenauer Foundation.[3] The Mongolian Chamber of Commerce and Industry conducted surveys of corruption in 2000 and 2002[4], and the JRP conducted a public opinion poll that included questions on judicial corruption in 2001 and again this year. These surveys confirm a widespread public perception of corruption, especially in the judiciary. The courts were ranked the second most corrupt institution at the Soum level in the 1994 Academy of Science survey. In the 2000 Chamber of Commerce and Industry Survey Judicial Institutions were ranked the second most corrupt (after Customs) with 41.6% of respondents naming it the "most corrupt."[5] Fifty percent of respondents rated legal institutions as "poor" or "very poor" in their attitude toward combating corruption in the 2002 Chamber of Commerce and Industry survey. In Judicial Reform Project's 2001 survey, 56% of respondents had "little" or "no" confidence in their local courts, though that improved to 51% in 2003.[6] It must be remembered that these surveys ask the public for their feelings about corruption, not hard evidence of it. These different surveys asked different questions, and may be capturing both bribery and improper influence by public officials on the courts.

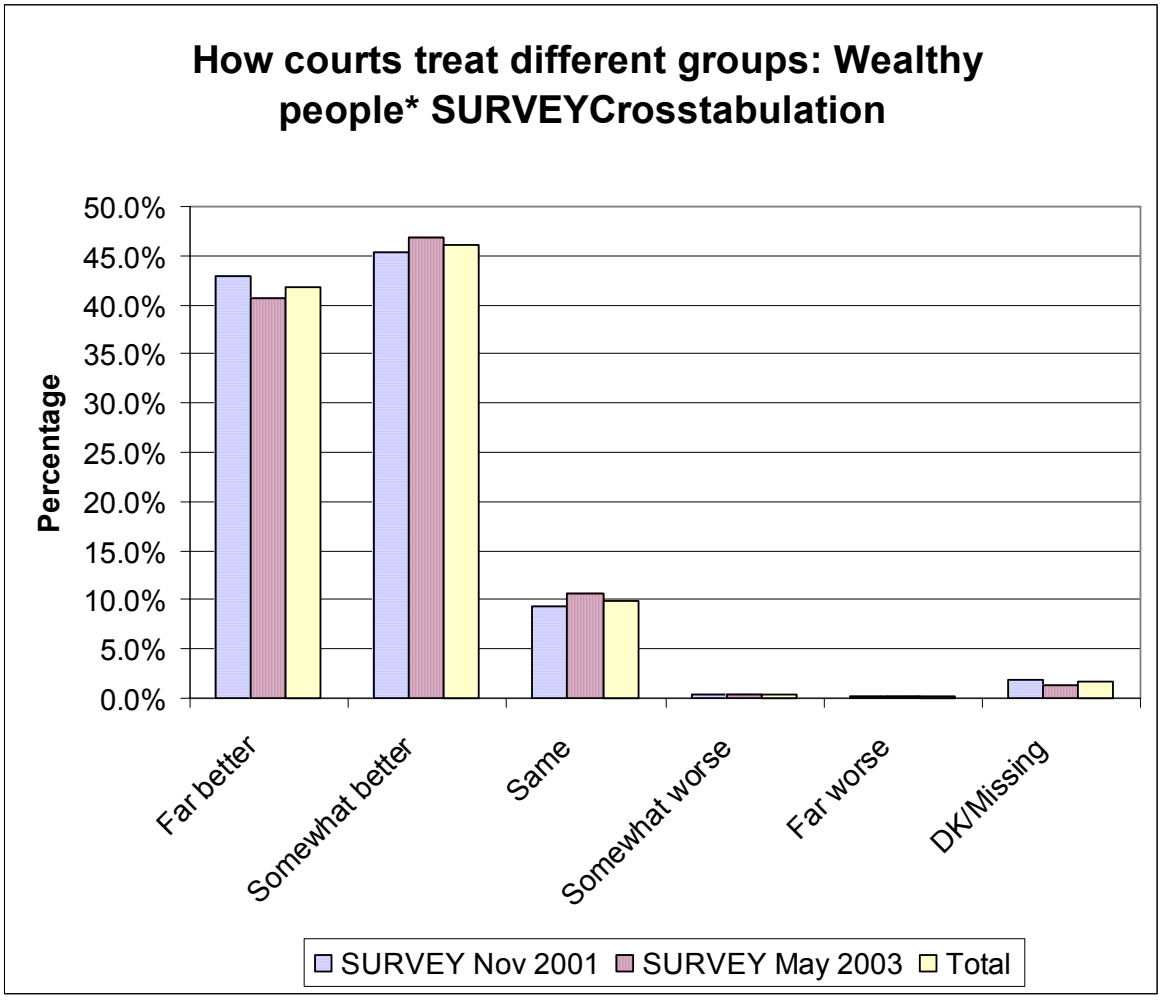
A June 2003 survey by IRI showed that people ranked corruption as the cause of Mongolia's economic problems more often than any other cause. Only 3% of the population thought that fighting corruption was a success of the government.

The Judicial Reform Project's survey showed that from November 2001 to May 2003, the percent of people who strongly agreed that judges were generally honest and fair in deciding cases increased from 19.2% to 26.3%. While the number of people who don't believe that judges are honest is still too high, there is an indication that there has been an improvement in the public perception of honesty. The vast majority of people thought that wealthy people, people with influential official positions and relatives and friends of court officials were treated better by the courts. However, there was a slight improvement in these numbers as well between 2001 and 2003.

SURVEY Crosstabulation

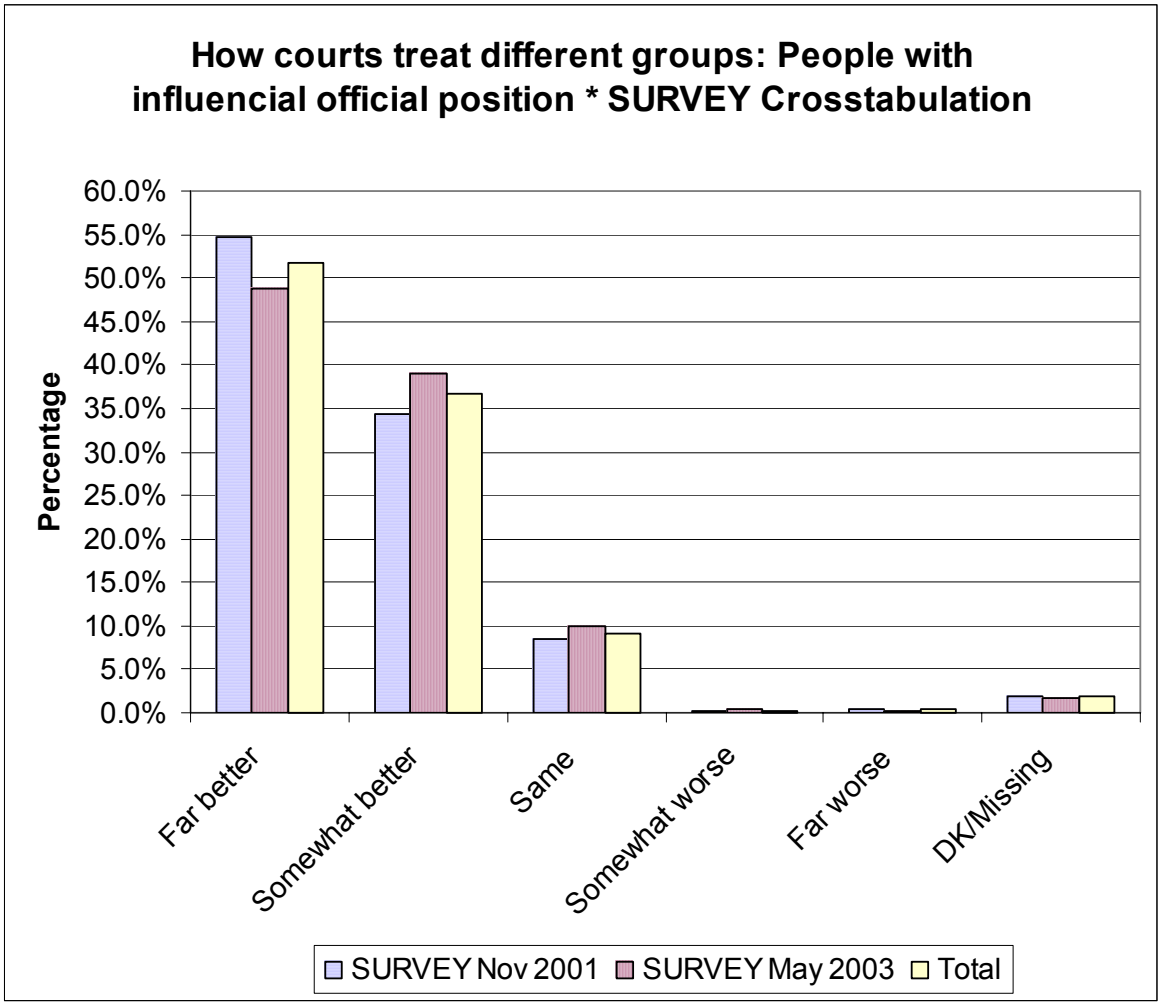
		SURVEY		Total
		Nov 2001	May 2003	
Q7.4 How courts treat different groups: Wealthy people	Far better	43.0%	40.6%	41.8%
	Somewhat better	45.3%	46.9%	46.1%
	Same	9.3%	10.6%	10.0%
	Somewhat worse	0.3%	0.4%	0.4%
	Far worse	0.2%	0.2%	0.2%
	DK/Missing	1.9%	1.3%	1.6%
Total		100.0%	100.0%	100.0%

[3] Cited as "Tumur-Ochiryn Erdenebilig, Public Opinion on Corruption in Mongolia" by Jon S.T. Quah, PhD. In "National Anti-Corruption Plan for Mongolia" prepared for UNDP.
[4] Available from JRP on request.
[5] Mongolian Chamber of Commerce and Industry 2000 survey, Annex 4, question 11.
[6] Question 1: "How much confidence do you have in each institution?"



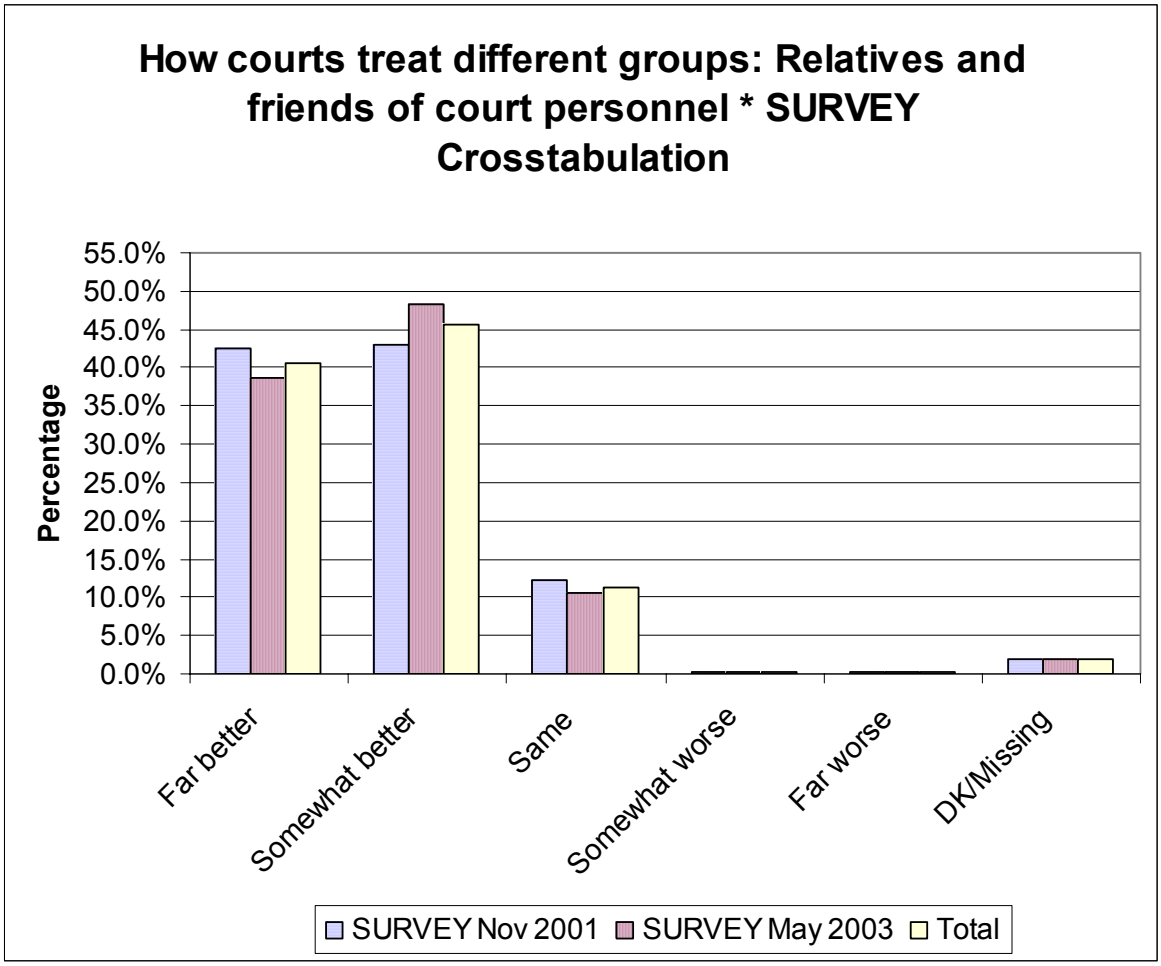
SURVEY Crosstabulation

		SURVEY		Total
		Nov 2001	May 2003	
Q7.4 How courts treat different groups: People with influencial position	Far better	54.7%	48.7%	51.7%
	Somewhat better	34.3%	39.0%	36.7%
	Same	8.4%	9.9%	9.2%
	Somewhat worse	0.2%	0.4%	0.3%
	Far worse	0.4%	0.3%	0.4%
	DK/Missing	2.0%	1.7%	1.9%
Total		100.0%	100.0%	100.0%



SURVEY Crosstabulation

		SURVEY		Total
		Nov 2001	May 2003	
Q7.4 How courts treat different groups: Relatives and friends of court personnel	Far better	42.4%	38.7%	40.6%
	Somewhat better	42.9%	48.3%	45.6%
	Same	12.3%	10.5%	11.4%
	Somewhat worse	0.3%	0.3%	0.3%
	Far worse	0.2%	0.3%	0.3%
	DK/Missing	1.9%	1.9%	1.9%
Total		100.0%	100.0%	100.0%



For all of their difficulties, public opinion surveys of corruption do show important danger signs for a justice system. The public perception of corruption itself is a very significant part of the mechanism by which corruption undermines the Rule of Law and economic development. If the public perceives the courts to be corrupt, they will be less likely to take their complaints there for resolution. Even if the courts are not corrupt, if the public will not take cases of human rights abuse to the courts, or election fraud to the courts, the effect is the same, the Rule of Law is frustrated. If the public perceives the courts to be corrupt, they will be less likely to invest in instruments that rely on court enforcement as their ultimate guarantee. Thus, "cash and carry" transactions, and construction for personal uses, particularly homes and user occupied commercial buildings, can thrive. Long term investments, such as securities and lending, (except secured lending that does not require court enforcement, such as pawn) become too risky to attract investors, either foreign or domestic. Such long term investments are necessary to create better paid jobs and sustained economic growth. Since Mongolia's current economic development suffers from the lack of exactly these kinds of long-term investments, it is fair to say that the public perception of corruption is impacting the Mongolian economy.

It is impossible to say whether corruption is more wide spread now than it was prior to the transition to democracy and a market economy. Comparative statistics do not exist. It is certain that corruption was a problem, the crimes were defined in the old code and convictions did occur. But, it is also clear that the gains of corruption that were possible in an isolated Marxist-Leninist state were not as great as those available in a market economy. The availability of luxury goods and the possibility of "conspicuous consumption" in a market economy increases

the incentive to be corrupt and raises the reward of high stakes corruption. Thus, it is probably that corruption is on a greater scale, if not more wide spread.

Assessment of how and why judicial corruption takes place

Judicial corruption may be facilitated by a number of factors that make its detection difficult. Transparency to public inquiry is among the best weapons against corruption; while opacity allows it to flourish. Incentives for corrupt activity exist for those who can be tempted; but disincentives can be created.

Judicial discipline has in the past been initiated by chief judges and decided by fellow judges in the same court. This system, with its bias against punishing colleagues has been replaced under the new Law on the Courts. Under the old system, most punishments were for drunkenness and absence from the job, not issues related to corruption. The new system includes public participation in the disciplinary process and may promote transparency if properly implemented.

The inquisitorial procedures and attitudes of the judiciary mean that the judges involve themselves in cases more proactively than is customary in common law jurisdictions. As a result, judges have frequent *ex parte* meetings with parties and witnesses. These meetings provide an opportunity for offering or soliciting bribes and the transfer of payments. In discussions of the new Judicial Code of Ethics, judges overwhelmingly objected to provisions that would prohibit or limit *ex parte* conversations. The most frequently cited reason was that the judges needed them to get the real story. This may reflect continuing conflict over the role of the adversarial system and the inquisitorial system in Mongolia. The Code, as it was finally adopted contained no such prohibition or limitation. While, by the nature of illegal activity, it is difficult to document that *ex parte* conversations provide the venue for corruption, it is clear that they provide an opportunity for willing buyers and sellers of judicial integrity to meet unobserved. Some judges suggested that meetings with parties be held with other court employees present, it has also been suggested that a second judge be present during such conversations. These suggestions were not adopted. They would be an improvement, if imperfect solution to the problems created by *ex parte* conversations. In the small communities in which most Soum, Inter-soum and Aimag courts exist, a prohibition on *ex parte* conversations cannot be expected to eliminate the opportunities for corrupt conversations, however, the universal use of such conversations in the justice system creates at least the appearance of impropriety. Taking some steps to limit them would send a useful message that judicial propriety is a societal value to be safeguarded.

Salary levels are a contentious issue with respect to corruption. It is clear that raising salaries by itself will not make dishonest judges honest. Yet, it is hard to dispute the proposition that salaries that do not allow a judge to meet the needs of his/her family will either drive honest judges out of the profession or tempt them to accept payoffs. An examination of TI's ranking of countries on the perception of honesty makes it clear that in general those with high perceptions of integrity also have high judicial salaries and those with low salaries tend to have perceptions of dishonesty. The correlation may not be equal direct causation, however, because economic development correlates with high judicial salaries as well as with middle class demands for integrity, a free press ready to expose abuses. These results of development may be the direct causal factors for judicial integrity. In Mongolia Judicial Salaries start from 108,429 to 165,553

tugrugs a month and are supplemented by seniority increases and awards.[7] Whether this is "low" or not depends on what it is compared to. Compared to salaries available in most rural areas, these salaries are certainly as good as or better than other salaries locally available. In Ulaanbaatar, such salaries are comparable to other government salaries, but below compensation available to well educated Mongolians in the private sector and in NGOs, diplomatic missions or international organizations. With the arrival of the free market economy, the salaries are miniscule compared to the amounts at stake in some civil cases in Ulaanbaatar. With respect to criminal cases, at least some Mongolians have achieved wealth that would allow them to place a price on their freedom from prison that would be significantly higher than judicial salaries. Thus, it is hard to evaluate the impact of salaries as a contribution to judicial corruption. Mongolians frequently site low salaries as a cause of corruption, especially when comparing corruption now to socialist times.[8] Not only were salaries and benefits sufficient to cover living expenses then, but because of greater equality and the inability to buy "conspicuous consumption status," there was less incentive to accumulate money. The Mongolian government seems eager to increase government salaries, and will undoubtedly do so as quickly as its finances allow. So there may be little in the way of donor recommendation that can or needs to be done with respect to this factor.

In 2000 there were 15 convictions for giving, receiving or mediating bribes in Mongolia. In 2001 there were 18 such convictions and in 2002 thee were 15. This shows that while prosecutions do exist, they are rare compared to the total number of civil servants. There were no convictions of judges during these years.

Most people have the potential to be honest or corrupt. It is worthwhile to look at the incentives for honest and corrupt behavior that face a judge. A judge, who is rational, will look at the advantages and disadvantages of her behavior. If it is more advantageous to be honest she will be honest. If it is more advantageous to be dishonest, she might be dishonest. There are of course moral and religious reasons to be honest beyond just financial advantage. But let us look at the financial calculations a rational judge might make.

The advantages of honesty are the salary and the respect of the community. The advantage of dishonesty is the money that can be received as bribes. To weight the difference between the two lets assume that a judge can make 50,000 Tgs a month from bribes. The present value of that for a 10 year career as judges would be 2,313,124 Tgs assuming a 2% interest rate (rate banks pay on deposits in Mongolia). That is the advantage of being dishonest. But there are risks to being dishonest, and the value of the risks must be deducted from the gain to give the complete value of dishonesty.

The salary is about 150,000 Tgs a month for a judge, the present value of which is 6,939,374 Tgs. If a judge is caught, then he gives up his salary. If a judge is caught and sent to jail, he loses his freedom. It is hard to place a value on freedom, especially because the length of imprisonment could vary, but most people would put a high value on it, let's assume it is 15 million Tgs. Also, after being caught, the judge's reputation in the community would be ruined. Again it is hard to place a value on reputation, but let's assume that this is worth 20 million Tgs. So the total loss that a judge might suffer by being corrupt would be 44.3 million Tgs. BUT, it is not certain that a dishonest judge will be caught, so we have to estimate the cost of being caught by taking into consideration the likelihood of being caught. Now the likelihood of being

[7] Basic salaries for judges are established by Parliament Resolution No. 80, November 8, 2001. Judicial rank supplements are established in the "Rules on Mongolian Judicial Rank", approved by Parliament Resolution No. 48, June 7, 2001. Supplements for public service are established by Government Resolution No. 96, 1995.
[8] Interview with Sarav Ganbold, Head of Division for Combating corruption and economic crime, Criminal Police, June 6, 2002.

caught is very hard for each judge to estimate. The judge can only use the number of other judges who have been caught to form an estimate. If no judges have been caught, then the reduction of the gain would be zero. Meaning that the judge would feel like he would get all the benefit and there was no risk. This is what the current situation is. If the judge knows of one or two judges that have been caught and sent to prison, then he will estimate what percent of all dishonest judges this represents and calculate the loss by that amount. If he estimates that there is a 5% chance of being caught, then the potential loss would be 2.2 million Tgs. At that rate it is still profitable to be corrupt. If she estimates that there is a 21% chance of being caught then her loss would be 9.2 million Tgs. Beyond that estimate of the likelihood of being caught, the judge would realize that it was more profitable to be honest.

Thus, if the chance of getting caught is 0% then the judge will stand to gain all 9,252,499 Tgs from bribery plus salary.

If the chance of getting caught is 5% then the judge will only gain 7.0 million Tgs.

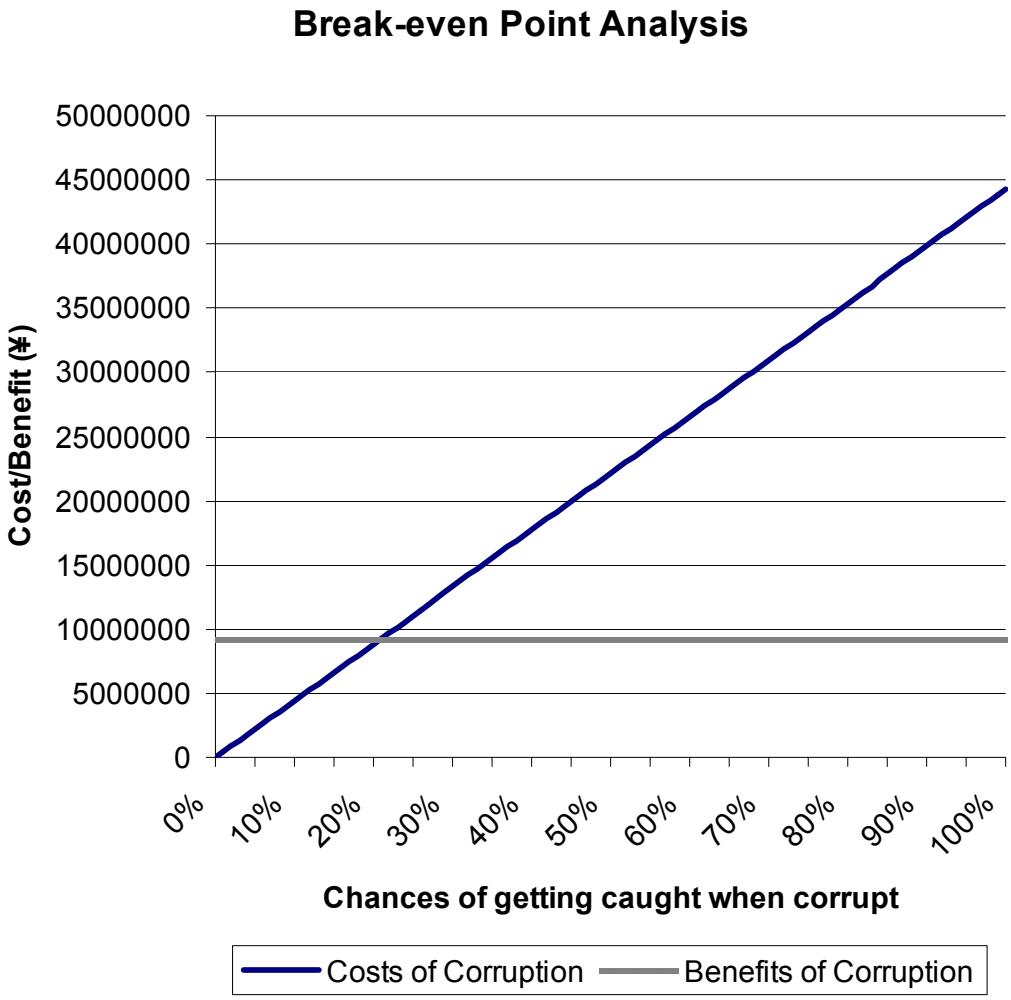
If the chance of getting caught is 25%, then the judge would lose 1.8 million Tgs by taking bribes. The loss would increase as the judge's estimate of the likelihood of being caught increases.

Interest	**2%**
Monthly Bribe	**¥50,000.00**
Period	**10 æèë**

Present Value of Total Bribes (PV)	2,313,124.81
Present Value of Total Salaries	6,939,374.44
Present Value of Total Revenue	**9,252,499.25**

**PV - Value of money over period of time, which includes time value*

Chances of getting caught	Costs of being corrupt			
	Freedom	Reputation	Salary + Bribe (PV)	Total
0%	-	-	-	-
5%	750,000.00	1,000,000.00	462,624.96	2,212,624.96
20%	3,000,000.00	4,000,000.00	1,850,499.85	8,850,499.85
21%	**3,136,263.29**	**4,181,684.38**	**1,934,551.58**	**9,252,499.25**
25%	3,750,000.00	5,000,000.00	2,313,124.81	11,063,124.81
100%	**15,000,000.00**	**20,000,000.00**	**9,252,499.25**	**44,252,499.25**



This shows that only a small number of judges convicted and sent to prison would have a big impact on the perception of all judges about the advantages of being honest. I am not trying to convince you that every judge makes these mathematical calculations, but everyone has an intuitive sense of when the risks out weigh the gains on any activity, and this is what that intuitive sense is going to look like. Many judges became judges out of a sense of justice and they will not be tempted for any reason. But so long as there are dishonest judges, Mongolia needs to work harder to investigate, convict and imprison enough to make corruption a very dangerous activity.

The failure to prosecute judicial corruption has been attributed to several causes. In 1993, responsibility for investigating corruption was transferred from the prosecutor's office to the police.[9] The police are both thought to be more corrupt[10] and are a branch of the Ministry of Justice and Home Affairs, therefore possibly susceptible to political pressure, both to protect individuals and responsive to a lack of political will to deal with corruption. The Law on the Prosecutors Office that came into effect on September 1, 2002 transfers the responsibility for investigation of crimes (including corruption) in the judicial sector (judges, prosecutors and

[9] Until 1993, the prosecutor's office was responsible for investigating economic and official crime. The Law on Amendments to the Criminal Procedure Code (June 7, 1993) transferred the power to instigate and dismiss such cases was transferred to the Police.

[10] In the 2002 Chamber of Commerce survey, 54% of respondents rated the police bad or very bad. p.6.

police) to a special unit under the Prosecutor General. This unit enjoys independence, but is troubled by a lack of resources and the need for special training.

Judicial corruption prosecutions in the United States have typically relied on measures such as recruiting corrupt attorneys to provide evidence by promising to suspend or reduce their sentences, and having them wear recording devices in conversations with judges where bribes are accepted. The "Greylord" investigation of the Cook County Illinois Courts (Chicago) is but the largest example of such an investigation of judges.

Currently the use of such devices in Mongolia is allowed if investigators (authorized police officers) request it and the prosecutor's office approves it.

According to the new Criminal Code charges against the bribe giver will be dropped if he/she voluntarily confesses to the relevant authorities (Commentary to Article 268). This is another step forward in combating corruption.

The police currently complain that their methodology for detecting corruption has not changed since Socialist times and are not suited to a market economy.[11] In terms of the Investigation Unit, this mismatch in methodology is even more of a stumbling block, except that, with new investigators, interest in adopting change is greater.

Public acceptance of corruption is said to be a key to corruption. While surveys indicate that most citizens do understand that corruption destroys economic development and weakens the state[12] commentators report that honest police are berated by their wives for not taking bribes,[13] and it is widely reported that people think that the best way to get things done in the courts is to pay a bribe.[14]

Possible solutions

Steps that Mongolia has taken to combat judicial corruption

A. Creation of a national Disciplinary Committee to enforce the new ethics code.

This has already increased the number of cases and the number of judges disciplined. The old system required the fellow judges in each court to judge any allegations against their colleagues. Judges are understandably reluctant to convict a colleague who they have worked with and who is likely to remain on the court. It was better designed to protect judges than discipline them. The new system has a national disciplinary committee. Under the old system only Chief Judges could make complaints, but now anyone can. The very fact that anyone can make a complaint increases citizen confidence in the accountability of the judiciary.

[11] Interview with Sarav Ganbold, Head of Division for Combating corruption and economic crime, Criminal Police, June 6, 2002.
[12] Chamber of Commerce 2002 survey: "Twelve. Corruption and Economic Growth", "81.4% of respondents believe that corruption has decreased economic growth, 31.7% responded that corruption has greatly slowed down economic growth. p.7.
[13] Interview with Sarav Ganbold, Head of Division for Combating corruption and economic crime, Criminal Police, June 6, 2002.
[14] Author's conversation with several Mongolian officials.

B. A Special Investigative Unit has been created with authority to investigate crimes by police, prosecutors and judges.

This new unit has the potential to have a big impact. They are charged with investigating all crimes by justice sector agents. The majority of cases so far are police misconduct, but they have recently started to investigate cases of judicial corruption. They have received both material and technical assistance from the USAID sponsored judicial reform project. Unfortunately, they are only now, after a year of existence being given adequate office space, which has prevented donors from even giving them enough equipment to do their job as effectively as they should. They also do not have undercover investigative authority, and they have not had good cooperation from the police who are supposed to conduct such undercover operations for them. It is nearly impossible to investigate corruption without some use of undercover techniques. Thus, while a promising start has been made, it is too soon to tell if this unit will be an effective deterrent to corruption.

C. An Anti-Corruption Draft Law is being considered.

The exact structure has not been determined so it is possible that the law will create an agency with the same problems that the Special Investigative Unit has experienced. The fact that such a law is being considered certainly means that some people are taking the issue seriously, but at this point it is too soon to tell if the new law will be effective, or just a piece of paper that allows some donors to make a check mark on their "good governance" score card. An Independent Anti-Corruption office has been proposed for Mongolia in the past. The study of these agencies in Hong Kong and Singapore was a major proposal of the 1998 "National Anti-Corruption Plan for Mongolia" designed by Professor Jon S. T. Quah for UNDP. While a great deal of discussion has centered on this idea, opposition from the Office of the Prosecutor General, and powerful MPs have made this a political non-starter in Mongolia. While the idea may have merit, it seems useless to revive it. It would be more pragmatic to see if the Investigation Unit under the Prosecutor General could be made to resemble the best aspects of such an independent office.

D. A change in the Criminal Code (Art. 269, part 2) allows a bribe giver who confesses before he is prosecuted to avoid prosecution.

Under the old law, both the bribe giver and the bribe receiver had to be prosecuted together. This created the certainty in most cases that if neither party admitted guilt, then neither could be prosecuted. There was no opportunity to get the less morally culpable party to admit guilt and testify against the other in return for a reduced sentence or relief from liability. The change allowing prosecutors to drop charges if a party confesses could help prosecution of corruption cases, though it may not be flexible enough to allow prosecutors to use it to gather evidence. Ideally, the prosecutors should be in a position to offer reduced sentences as well as complete absolution of liability and make it dependent on the degree of cooperation.

E. Public access terminals in every automated court make a great deal of information available to the public.

Previously judges kept all records of pending cases in safes in their offices. To get access to any information a litigant, a member of the public or the media had to find the judge and convince him/her to unlock the safe and let him view the case file. Now, automated courts have a public access terminal in the entry hall to the court at which anyone can get most information relating to any pending case. This greater transparency makes it impossible for judges to "lose" cases where they might have been bribed to take action. The knowledge that the public will be able to

follow a case means that judges will be less likely to make corrupt decisions. Any such corruption would now be more easily detected.

F. Random Assignment of Cases has been introduced in automated courts.

It is unusual for all the judges on a court to be equally susceptible to bribery. Thus, corrupt litigants sometimes bribe the person responsible for assigning cases to assign their case to a corrupt judge, or one who would favor them anyway. This situation has caused Federal Courts in the United States to require a transparent system of randomly assigning cases among the judges of each court. This prevents the chief judge from sending cases to corrupt judges if he has been bribed to do so. There is some evidence that this type of corruption occurs in Mongolia. Automation is a effective way to randomly assign cases. Some judges in automated courts have adopted it, while others have resisted. At present all courts that receive automation equipment have agreed to implement random assignment. An interpretation of the Criminal Procedure Code that ended argument about random assignments could facilitate this change.

Steps that Mongolia could take to combat corruption

A. Adequate powers and resources need to be provided by the government to the Special Investigative Unit.

The Special Investigative Unit must have both the official power and the resources it needs to be able to conduct corruption investigations. This includes money for forensic technology, the powers to conduct under cover operations or the assignment of a special police unit to work for it as well as training and supplies. It has taken the government a year to provide adequate office space. Almost all of the equipment and training for the unit has been provided by foreign donors. The Mongolian Government must make a commitment to this agency if its commitment to anti-corruption is to be taken seriously.

B. Financial statements should be filed by all judges with the Disciplinary Committee and the Committee should conduct random audits of some of the statements every year to ensure that they are complete and honest. There should be serious disciplinary sanctions for failure to file complete and accurate financial statements.

Every judge should be required to file annual financial disclosure forms. While these forms are required of some officials under current law, there is no penalty for failure to file them. For judges the forms should be open to the public, to allow discovery of conflicts of interest. Failure to file and erroneous filing should be grounds for dismissal. This could be accomplished through amendment to the Judicial Ethics Code by the Judicial Board (meeting of Supreme Court Chief Justices and Chief Judges of lower courts).

C. Ex Parte Conversations could be banned or regulated.

Judges who meet in private with a party or their attorney without anyone else present raise the suspicion that bribes may be solicited or offered, even if the meeting is entirely innocent. To protect the reputation of judges, all parties should be present for such meetings, or at the very least, some other witness needs to be present. *Ex parte* conversations could be eliminated by amendment to the Judicial Ethics Code. Given the opposition of most judges, such a change would require education and pressure from domestic anti-corruption groups and foreign donors.

D. More people need to be aware of the information available on the public access terminals, including the written decisions. Legal professionals, the Media and NGOs in particular need to know how to use the public access terminals to promote transparency in the courts. As soon as possible the information on these terminals should be accessible through the internet to increase the transparency.

The public needs to be aware that the automated courts have public access terminals in which they can obtain information on court cases. The automated system has a wealth of information on case status, judge assignment, trial and judgment date and a synopsis of the court decision. There should be a media campaign to let the people know that they have a right to view this information. The General Council of Courts should require that all court personnel, including judges, be trained in how to be more open and user friendly to the public. The automated system has opened the courts but personnel attitudes toward the public and litigants remains a problem.

E. Cases that are reassigned after random assignment should be analyzed to make sure improper motives were not involved. A regular report of reassignments should be filed with the GCC professional or disciplinary committee.

Chief Judges retain the power to reassign cases for pragmatic reasons such as the illness or over work of a particular judge. However, the new software allows to monitor such reassignments and identify those Chief Judges who routinely reassign cases to a particular judge. This would expose to inquiry the reason for such reassignments, and the possibility of inquiry alone should discourage abuse of this power

F. Judges must write clearer opinions where the basis for the decision.

Well reasoned and explained opinions, both in terms of the law and the facts, that are readily understandable to the litigants and the public are essential to a well functioning judiciary. Only this can reduce the perception of corrupt decisions and the ability to make decisions contrary to the law. Training should be increased in this area and professional guidance should encourage better writing. Ultimately discipline should be imposed for incomprehensible opinions. GTZ and JRP will foster a competition for the best written lower court opinions to increase interest in this important, but largely ignored area. Transparency is impossible with opaque opinions.

G. The new Judicial Disciplinary Committee needs to be adequately staffed and funded.

There are a great number of procedures the Judicial Disciplinary Committee can undertake to combat corruption in the courts. Random audit checks of case files handled by a particular judge and questionnaires sent to all parties in a case should be conducted on a periodic basis. Any case file discrepancies or disparaging results from the party questionnaire should be investigated. The procedure for filing complaints against judges should be required to be prominently posted in the public area of every courthouse. Protection for the identity of the complainant should be provided. Training and procedures should be in place for the efficient investigation of every complaint, with written standards for dismissal of complaints, and the requirement that the reason for dismissal be explained to the complainant

Conclusions

Mongolia faces serious problems with respect to Judicial Corruption. Corruption stands in the way of Mongolia's ambition to establish the rule of law and a prosperous market economy. However, there are a number of concrete steps that can be taken to reduce the opportunities for

judicial corruption and increase the chances of its exposure and prosecution. Successful prosecutions need not be numerous in order to have a wonderful exemplary effect. Seemingly small, but meaningful steps in court administration outlined above can make corruption easier to detect and prosecute. Changing the psychological factors in society that allow corruption will take time, it will also take time to raise judicial salaries to levels where all judges feel financially secure to a point that it would be irrational to risk that security for the sake of a bribe. Yet, real and measurable changes should be possible by following the steps that can be enacted immediately.

THE DRAFT REVISED ACTION PLAN FOR THE STRATEGY PLAN OF THE JUSTICE SYSTEM OF MONGOLIA*

Draft

14 November, 2003

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
A. TO STRENGTHEN ECONOMIC INDEPENDENCE OF THE JUSTICE SYSTEM BY ENHANCING ECONOMIC CONDITIONS OF THE SYSTEM					
1. To provide office space and equipment to the justice system 1.3.2, 1.5.1, 2.3.2, 5.1.4, 5.3.2, 5.5.4, 6.2.1	1. To study justice system needs for courtrooms, office space, equipment, staffing and administrative support necessary for normal operation of the justice administration. ***2. Conduct a study on technical equipments need of the Judiciary*** *3.* To establish Judiciary Support Fund (JSF), to determine regulations on resources of the Fund, to start securing resources. *–To implement an establishment of Judiciary Support Fund and develop its rules. (JSF) in 2003 (Capital City Appellate Court)* 4. To develop and hold bidding for procurement of required supplies for the judiciary. *5.* To hold a bidding for building a model court building (at least one) *–Hold bidding for*	***~~MOJ~~ GCC, GPO, JRP*** ***GCC, JRP***	• To approve bylaws of the CSF re: structure, organization and governance of the Fund and to secure initial funding of no less than US $500,000 within 2001 • To build no less than 1 model court building in accordance with appropriate requirements by the end of 2002 • To secure at least 20 percent of all the equipment required by the end of 2002 and at least 50 percent thereof by the end of 2003 • To completely provide supplies to the justice system starting by the end of 2004	5,379,476 Government: 1,366,711	4

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	building construction for Chingeltei and Songinohairhan district courts within 2005 (Capital City Appellate Court) ***6. Add Orhon, Dornod, Dornogovi, Tuv aimag courts and not to give a name of a particular court, the GCC shall decide which court shall be provided with a building first and second turn etc (Chief Justice Ch. Ganbat)***				
1.4.2.	*7. Establish and provide with technical equipments a Court Session Room at the 8 district courts of UB that meets all requirement for holding court session in accordance to the design of the Capital City Court Session Room, within 2004(Capital City Appellate Court)* 8. *To resolve issue of office building for some aimag and district prosecutor offices that are renting buildings. (GPO)* 9. ***To provide a detailed legislative regulation of a procedure and time lines for submitting a budget and the budget implementation account***	***MoJHA, GCC, JRP***			

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	of the judiciary to the State Ih Hural, and obtaining and submitting audit opinion.(GCC)				
2. To provide housing and sufficient salary to the justice system members 1.3.2, 1.5.1, 1.5.2	1. To statutorily guarantee provision of housing to newly appointed judges and *prosecutors* with no housing (GPO) 2. To issue rules on increasing judicial salaries and allowances in accordance with the State anti-corruption strategy and the State support policy for the government employees *3. To explore the alternative of getting support from the ADB "Housing Sector Finance Project" (JRP)* ***4.** To create apartments owned by Prosecutor Office (GPO)*	General Council of Courts, ~~***MOJ***~~ ***JRP***	• To spend 10 percent of CSF resources by the end of 2002 and 15 percent by the end of 2003 on no-housing judges • To increase salaries of at least 50 percent of all judges by at least 30 percent by the end of 2001	5,379 Government: 5,379	
3. To improve regulations on developing and approving the budget proposal and examining the budget implementation of the ***Judiciary-including the Prosecutor Office*** 1.3.3, 1.4, 5.6.1,	1. To study the practices of foreign countries concerning budgeting and financing of the justice system 2. To study necessity, structure, staffing and financial needs for creating a judiciary budget preparing, executing and reporting unit within the General Council of Courts 3. To create the unit 4. To legislate in the Law on Budget payment of 1 percent of the State budget to the justice system	General Council of Courts ***GPO,JRP***	• To amend the Law on Budget by the end of 2001 • To create the judiciary budget unit by the above deadline	45,417 Government: 2,690	1,2

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
5.6.2	5. To apply new procedure of preparing budget proposals of the justice system from 2002 *6. To develop a strategy for financial security (justification of an adequate budget) consistent with the Public Sector Management and Finance Act* *7. To study in detail the process of controlling and developing the judiciary budget to make in consistence to the Law on Courts. To correct the Government decision to reduce the judiciary salary fund for 2003 by 15% and to get back this fund in 2004 budget and get be resolved issue of getting judiciary assistant staff salary fund by a local government within 2003. (Capital City Appellate Court)* ***8. To provide a detailed legislative regulation of a procedure and time lines for submitting a budget and the budget implementation account of the judiciary to the State Ih Hural, and obtaining and submitting audit opinion in 2004. (GCC)***	***GCC, MoJHA, JRP***			
B. TO INCREASE EFFECTIVENESS OF AND PUBLIC ACCESSIBILITY FOR THE ACTIVIITES OF THE JUSTICE SYSTEM					
1. To establish a unified information network (UIN) for	1. To define purpose and function of the UIN 2. To conduct technical and clientele	*MoJHA,*	• To connect courts, prosecutors' offices and court decision enforcement organization in	4,303,576 Government:	1-9

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
the justice system 1.1.4, 1.7.2, 4.1.2, 4.1.3, 4.1.4, 4.2.2, 5.2.1, 5.2.3, 6.2.3	research for establishing the UIN 3. To determine the hard-ware requirements 4. To develop and test soft-ware programs 5. To introduce the UIN on the following phased implementation strategy: -the justice system agencies in UB -the justice system agencies in rural areas -other users *-to enroll NGO's that work on Human Rights Protection (Women Lawyers Association)* 6. To determine staffing needs and to develop requirements for the staff 7. To establish the UIN operating center in charge of technical and information management of the system. 8. To conduct training for the UIN center staff and the network users 9. To promote the activities of the UIN ***10. To unsure of creation of methods which insure consistent interpretation and correct application of the law, e.g. publication for judges of court decisions, conducting roundtable meetings of judges at the same court level, to establish***	***GCC, GPO***	Ulaanbaatar to the UIN within 2002 • To connect all agencies in rural areas to the UIN in 2003-2008 • To connect any other users (State Great Khural, Cabinet, President's Office, police) to the UIN by 2010	92,873	

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	permanent publishing system of court decisions in 2005(GCC).				
5.1.4	11. *To explore and provide necessary work conditions, space etc. to participants of a court proceeding.(GCC)*	*Supreme Court, Supreme Court Research Center*			
5.4.1.	*12. To ensure that citizens are able to petition legal agencies and have instant access to decisions by the agencies, to implement tasks to decrease inconveniences in the above process- To issue court decision collection serial(GCC)*				
5.4.2.	*13. To establish a mechanism to promptly respond to any statement which is false or defamatory concerning justice system decisions, or the activities and integrity of a judge, and to use this mechanism to inform the public of the truth in 2004.(GCC)*	*GCC*			
5.6.1.	*14. To estimate expenses involved in each stage of a judicial proceeding and to consider such expenses in preparing the judiciary's budget –To conduct a nationwide survey in 2004-2005(GCC).*	*GCC*			
5.6.2.	*15. To introduce fees for certain court services and to make these services available in 2005. (GCC)*	*GCC*			

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
Conduct public education activities, training on laws and judiciary.	***16. Conduct survey on the public legal education level. (MoJHA)***	***GCC, Supreme Court Research Center, JRP***	***April, 2004***		
		GCC, Supreme Court,			
	17. Conduct National Seminar on improvement of the public legal education. (MoJHA)	***Supreme Court Research Center MoJHA NLC***	***June 2004***		
	18. Develop and implement a Strategic Plan on improvement of the public legal education. (MoJHA)	***MoJHA NLC***	***Second half, 2004***		
	19. Publish a collection of the Mongolian international treaties and conventions -collect and unify provide with funding (MoJHA)	***MoJHA MoFR NLC Parliament JRP***			
2. To establish press center/services (PCS) of the justice	1. To define purpose and function of PCS 2. To legislate the responsibilities of	~~MOJ~~ ***GCC GPO***	• To make amendments to appropriate legislation and to conduct training for the PCS staff	53,443 Government: 32,114	3,4,5

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
system 1.7.1, 1.7.2, 1.7.3, 5.2.2, 5.4.2	PCS 3. To assess staffing and financial needs for establishing and operating PCS 4. To establish the PCS 5. To conduct training for PCS staff as well as for reporters *6. To develop a protocol for the NLC press center (coordination and cooperation) with the public relations departments/officers of judicial and legal institutions* 7. *To expand current public access terminal and unify with the PCS and study and develop rules for its* activity within 2003. (Capital City Appellate Court)		and reporters by the end of 2001 • To establish the PCS within the 2nd half of 2001		
3. To establish a unified research center (URC) of the justice system. 3.1.1, 3.1.2, 3.1.3, 3.3.1, 4.1.1, 6.3.1	1. To study the practices of foreign countries 2. To determine the structure, organization and purpose of the URC. 3. To determine staffing and financial needs necessary to establish the URC 4. To define the process for gathering information 5. To determine and legislate functional responsibilities of justice system agencies toward the URC 6. To designate an agency and	~~MOJ,~~ ***Supreme Court, Prosecutor's Office***	• To complete the studies in 2001 • To start the URC activities in 2002	175,470 Government: 46,163	1,2,7

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	official responsible for the URC 7. To provide URC research specialists with opportunities to study foreign trends and methodologies *8. To develop a public education strategy based on a public perception survey and coordination of public education activities (NLC Legal Information Promotion Center* *9. To provide NLC Criminology Center with recommendations on its activities.* *10. To get resolved issue of establishment of a branch unit of the Judicial Research Center at the Capital City Appellate Court within 2004.(Capital City Appellate Court)* ***11. To explore the possibility of establishing an overall mechanism for identifying the needs for the legal regulation o social relations, which are detected in the course of judicial proceedings, and submitting proposals thereon to the lawmaking body in 2004.(GCC)***	Training Center of the NLC and other Legal Information and Public Education Centers.) ***Supreme Court***			
4.To conduct publicity campaigns on the activities of	1. To determine purpose, functions and operational code of a public awareness and publicity unit	MOJ, ***JRP***	• To establish the public awareness unit (benchmark to be determined in view of the creation of the UIN)	169,301 Government: 12,497	2,3,4,5,6

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
the justice system and legal education programs for the public 1.7.2, 5.2.1, 5.2.2	within the PCS (press center/services). 2. To establish the unit 3. To conduct a survey with the purpose of determining the level of public awareness 4. To organize a national seminar on raising public legal awareness 5. To develop and implement a public legal awareness raising strategy 6. To study practices of foreign countries of raising public awareness *7. To coordinate all public education efforts of judicial, legal institutions and donors, and provide relevant training (NLC Training Center and Legal Information Promotion Center)* *8. To improve the NLC newspaper column publishing the operational procedures of public institutions (including judicial and legal institutions) to enable citizens to petition legal agencies and have instant access to decisions by the agencies* 9. *To enroll NGO's work in Human Rights Protection field (Women Lawyers Association)*		• To complete surveys to determine the level of public awareness within the 1st half of 2001 • To conduct the national seminar within the 2nd half of 2001 • To pass the strategy in the 2nd half of 2002		
5. To establish print workshop for	~~***1. To study needs for enhancing or restructuring the present***~~	MOJ	To start the workshop by the end of 2002	163,279 Government:	1-4

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
printing official copies of legislation and judicial decisions 4.1.4, 5.2.1, 6.5.4	~~***government publishing house, to determine the capacity requirements***~~ 2. To assess financial and technical needs for establishing the print workshop 3. To hold a bidding 4. To establish the workshop 5. To define the status of the workshop for printing official copies of legislation			0	
6. To explore the possibility of establishing an overall mechanism for identifying the needs for the legal regulation of social relations, which are detected in the course of judicial proceedings, and submitting proposals thereon to the lawmaking body *3.3.1*	*1. To improve the current mechanism and amend the Law on Parliament*	***MoJHA, GCC, GPO***			
7. To statutorily permit periodic rotation of judges and prosecutors among different	1. *To recommend possible solutions and statutory provisions for the periodic rotation of judges and prosecutors among different*	***GCC***			

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
jurisdictions with the consent of the judge or the prosecutor being transferred *3.4.2*	*jurisdictions*				
8. To ensure correct application and strict observance of the laws by the justice system *4.1*	1. *To provide recommendations on procedures of issuing and drafting Supreme Court interpretations* 2. *To develop procedures for regular dissemination of new law texts (NLC Legal Information Promotion Center)* 3. *To expedite the process of establishing of the Supreme Court, PGO website (PGO)* 4. *To conduct an unified study on proving judges and legal professionals with manuals and materials considering that Mongolia is a country with written laws. Manual and reference materials: resolutions and decisions of the Great Hural, decisions, resolutions, recommendations, interpretations of the Supreme Court, interpretations, recommendations issued by universities and institutions and articles written by scholars. (Capital City Appellate Court)*	***GPO, Supreme Court MoJHA*** (***NLC Legal Information Promotion Center***)			

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	5. *In the Civil Code: Issue of application law in similarity in appearance and issue of making judgment on parent's responsibility in family disputes. At the current time the courts are having a practice do not resolve disputes rising from narrow issues of society like this. (Women Lawyers association)*				
C. TO IMPROVE THE SYSTEM OF TRAINING, BETTERING AND QUALIFYING LEGAL PROFESSIONALS FOR THE JUSTICE SYSTEM					
1. To review the curricula and content of courses at law schools and faculties, to determine standard requirements for the curricula and develop an oversight mechanism over the requirements 6.4.1, 6.4.2, 6.4.3	1. To issue rules on accrediting and ranking of schools which train legal professionals, to ensure implementation thereof 2. To establish and develop requirements for law clinics at law schools and faculties. 3. To establish a model law library 4. To create research units at selected law faculties to advise and oversee the drafting of legal textbooks 5. To establish a uniform curriculum and content of mandatory subjects at law schools and faculties.	~~***Education Ministry,***~~ MOJ ***JRP***	• To conduct accreditation and create ranking system of all law schools and faculties by the end of 2000 • To establish a library with no less than 50,000 books and connected to the unified information network by the end of 2001 • To create research units at all law schools and faculties by the end of 2003 • To provide training/degree programs in countries with highly developed legal systems to no less than 30 percent of all the law professors by the end of 2004	236,633 Government: 2,690	3,4
2. To improve the continuing legal education system	1. To devise a policy and standards for providing continuing legal education and obtain necessary approvals	MOJ, Supreme Court, the General	• To secure office space, necessary equipment and other supplies for the CLEC by the end of 2000 • To develop and start executing the	211,734 Government: 2,690	ADB NO CSLAW OOKGO 16

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
4.1.2, 4.1.3, 4.1.4, 6.5.1-6.5.8	2. To coordinate the activities and to establish a uniform curricula of the existing continuing legal education programs 3. To promote cost-efficient operations among the continuing legal education programs. 4. To secure additional financial support for the continuing legal education center 5. To review continuing legal education programs in other countries for the purpose of improving the effectiveness of the continuing legal education centers. 6. To develop and execute sub-program on exchange of knowledge and experience among legal professionals 7. *There is a strong requirement to study professional English language to use all donor's assistance more fruitfully, to reflect and implement foreign countries judiciary institutions experience into our activity. Currently, even we communicate throw a good translator, there are actions that we do not understand well a professional narrow issue. To organize advanced training on legal English. (GPO)*	Prosecutor's Office, Mongolian Advocates Association, National Association of Mongolian Bankruptcy ***JRP*** ***JRP***	policy for providing continuing legal education for the justice system members beginning from 2001 • To develop and pass the continuing legal education national strategy for all legal professionals from 2002		3,5,6 The NLC shall be provided with own training building and required technical equipments. By 01 March, 2004 the Legal Professional Retraining Strategic Plan will be developed.

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
3. To improve the qualifying system of legal professionals 2.4.1, 2.4.3, 2.4.4, 2.4.6, 6.5.7	1. To research and study the experience of qualifying judges, prosecutors and advocates (graduates of law faculties) in other countries 2. To determine appropriate standards and to develop proposals on establishing a system for qualifying legal professionals 3. To create qualifying system for legal professionals 4. To revise and legislate qualifying process of judges and prosecutors. 5. To determine the financial feasibility for creating an automated system of personnel files of judges and prosecutors. 6. To create the automated system. *7. To provide recommendations to the Judicial Professional and Disciplinary Committees on qualification, job performance evaluation procedures and criteria, and enforcement of ethical requirements* *8. To redefine the purpose of judicial job performance evaluation (e.g. improvement of the adjudication process and quality of judicial decisions, determining of needed training, merit based promotion, etc.)* *9. To link, if possible, the Public Sector Management and Finance*	MOJ ***JRP***	• To introduce the system of qualifying judges and prosecutors by the end of 2000 • To start building up the personnel files of the justice system professionals beginning from 2002	109,115 Government: 2,690	1,5,6

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	Act "output" and the Supreme Court "productivity/efficiency standards" with job performance evaluation criteria *10. To reflect the ethical requirements in the qualification and selection criteria (Law on Qualification and Selection of Legal Professionals")* *11. To make the qualifying process more transparent and improve the testing material, procedures* ***12. To establish and legislate criteria for the performance evaluation of Chief Judges of all courts in 2004 (GCC)***	***GCC, JRP, Supreme Court Research Center***			
	13. To conduct selection and examination of legal professionals in order to implement the Law on Selection and Qualification of Legal professionals. (MoJHA) ***14. Establish the mechanism of selection and qualification of legal professionals. (MoJHA)*** ***15. Establish an unified human resource recording system. (establish an unified data base of human resources) and conduct assessment of required budget and technical needs. (MoJHA)*** ***16. Establish an unified nationwide***	***MoJHA NLC*** ***MoJHA NLC***	• ***In 2004 will be established*** a **mechanism for selection and qualification of legal professionals.**		

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	registration of legal professionals resources. (MoJHA)				
D. TO IMPROVE THE ACCOUNTABILITY MECHANSIM OF THE JUSTICE SYSTEM AND LEGAL PROFESSIONALS					
1. To enhance a mechanism and to define legal grounds for compensating citizens and organizations for damages caused by mistakes of the justice system 2.1.1	1. To study the experience of foreign countries in calculating and compensating damages 2. To determine the feasibility of creating such a mechanism of compensation 3. To develop guidelines for calculating damages to citizens and organizations caused by mistakes of the justice system. 4. To define and legislate a mechanism of compensation 5. To study establishment of the compensation fund 6. To establish if necessary the compensation fund	MOJ	• To pass the relevant legislation in 2002 • To start the Fund activities from 2003 • To introduce a full-scale system of compensation to citizens and organizations of damages caused by mistakes of the justice system before 2005	449,786 Government: 204,992	1-5
2. To improve ethical performance and responsibility of the justice system members 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5	1. To research and study the experience of foreign countries with regard to the codes of ethics and enforcement mechanisms. 2. To study appropriate structure, organization and functions of an enforcement mechanism either to be set up at each justice system agency or united throughout the system. 3. To legislate the creation of a mechanism for detecting and resolving ethical violations and	MOJ, Supreme Court, the General Prosecutor's Office ***JRP***	• To pass the law on detecting and resolving ethical violations committed by the justice system members and to start new Disciplinary Committee functioning in 2001 • To prepare and publish no less than 1000 copies of the ethics manual	77,781 Government: 897	1,4,5,6

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	imposing responsibility for breach of ethical requirements 4. To revise the codes of ethics and ethical standards for each of the justice system agencies and members 5. To conduct training on ethical behavior and standards for judges 6. To prepare a manual on ethics for legal professionals reflecting specific application of each discipline *7. To review the current Judicial Code of Ethics* *8. To provide recommendations to the Disciplinary Committee on enforcement mechanisms and activities on Judicial Code of Ethics.* *9. To publish the Disciplinary Committee decisions* *10. To enforce the duty to submit income statements by justice sector officials and explore the possibility of issuing a statutory provision requiring the publishing of income statements* *11. To develop and implement concrete measures directed to improve and enhance professional qualification and ethics of investigators and inquirers (Lawyers Center for Supporting Judicial Reform)*				

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
2.4.4.	*12. Provide Investigation Unit with technical assistance and take measures directed to improve professional skills of investigators of this Unit. (GPO)* ***13. To establish and legislate criteria for the evaluation of ethical and professional qualifications and performance skills of judges of all courts in 2004.(GCC)***	***JRP*** ***GCC, Supreme court Research Center***			
3. To improve the criteria for evaluating and rewarding the performance of the justice system agencies and legal professionals 2.1.2, 2.1.3, 2.3.1	1. To conduct assessment of the present system (evaluation process, evaluation criteria, trends etc.) for evaluating the activities of the justice system and legal professionals 2. To study the practices of foreign countries 3. To determine evaluation criteria for the justice system agencies 4. To define the rules on imposing responsibility or giving rewards to the justice system members based on the evaluation criteria 5. To explore and prepare a proposal with respect to creation of a fund of the justice system professionals' liability insurance. 6. To create the fund 7. To pass or amend if necessary relevant legislation *8. To explore the result and*	~~***MOJ,***~~ Supreme Court, the Office of the Prosecutor General ***JRP***	• To fully introduce a system for evaluating the performance of and imposing responsibility on the justice system agencies and legal professionals before 2002 • To start the activities of the liability insurance fund of the justice system beginning starting from 2003	259,255 Government: 207,682	2,5,6

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	summary of "Workload Study" conducted by JRP and establish normative standard for first and appellate instance court judges work. (Capital City Appellate Court)				
E. TO IMPROVE CASE MANAGEMENT AND COURT ADMINISTRATION					
1. To improve the case management 2.3.1, 2.3.2, 2.3.3, 6.2.1, 6.2.2, 6.2.3, 6.5.10,	1. To conduct survey on the present situation of case management 2. To research the practices of case management in other countries. 3. To conduct roundtable discussions with foreign experts concerning case management 4. To determine a model case management system. 5. To introduce and evaluate a model case management system with one of the courts 6. To develop a procedural manual for using the case management system 7. To implement the new case management system throughout the court system 8. To hire and train sufficient staff in charge of case management 9. To amend the relevant legislation, if necessary 10. To conduct training on case	General Council of Courts, ~~***MOJ,***~~ ***JRP***	To introduce the model case management with one court in 2003 and with the rest on a phased-in basis in following years	142,062 Government: 2,690	2-10

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	management *To enroll in the training on case management advocates, authorized representatives that represent at the court NGO's specialized on Human Rights Protection such as Mongolian Advocates Association. (Women Lawyers Association)*				
2. To improve court administrative management 3.4.1	1. To study functions and purposes of the present court administrative management system and to develop court administration and management standards in accordance with international standards. 2. To determine and document lines of duties of administrative management of courts and administration of judicial proceedings. 3. To implement a court administration and management system as a pilot project at a selected court(s). 4. To establish an advisory group to evaluate on the court administrative management within the pilot project at the selected court(s). 5. To develop a strategy for implementation of the court administration and management	MOJ, General Council of Courts	To start developing model court administrative management system from the 2nd half of 2000, to introduce a uniform system of court administrative management with every court by the end of 2002	207,669 Government: 2,690	1,3,5,6

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	system pilot program with every court. 6. To hire and train personnel who will manage courts administratively *7. To improve relevant software and statistical data (training on statistics, e.g. purpose, collection methods, etc.)*				
F. TO IMPROVE ORGANIZATION AND STRUCTURE OF THE JUSTICE SYSTEM					
1. To re-examine court jurisdictions with the purpose of promoting independence 1.1.1, 1.1.2, 1.1.3	1. To re-examine jurisdictions of first instance, appellate and Supreme courts 2. To legislate revised court jurisdictions based on the above study 3. To review location and organization of courts in connection with revised court jurisdictions 4. To conduct research and analysis of legal justifications for and implications of prohibiting or limiting the right of a higher level judge to submit a protest (appeal) against a decision of a lower court judge or prohibiting the right of a higher level prosecutor to withdraw protests filed by a lower level prosecutor 5. To compile research and formulate recommendations for administrative or legislative	MOJ, General Council of Courts, Supreme Court, the General Prosecutor's Office	• To prepare the report on jurisdictional issues of the court s within the 1st half of 2001 • To amend the relevant legislation within the 1st half of 2002 • To decide on locational and organizational reforms of the court system within the 1st half of 2003 • To meet staffing needs by the end of 2002 • To conduct and complete the research on the issue of protesting (appealing) and withdrawing in 2001 • To amend the relevant legislation in 2001	2,690 Government: 2,690	1-5

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	changes 6. *To amend the relevant legislation to reduce types of cases to be considered by a panel* 7. *To develop written standards and scope for "professional guidance"* 8. *To establish circuit (appellate) courts based on the workload study results without diminishing the accessibility of court services* 9. ***Provide the State General Registrar on Immoveable Property with the specialized judge status in order to make in consistence with the international standards. Study an issue of transferring the State Registration Department of Immoveable Property into jurisdiction of MoJHA or Courts and to get resolved by authorized institution. (MoJHA)***	***JRP***			
2. To provide conditions for introduction of alternative dispute resolution methods 3.2.2, 3.2.3, 3.2.4.	1. To research the practices of ADR in other countries. 2. To conduct roundtable discussions with foreign experts concerning ADR. 3. To develop concrete recommendations on practical implementation of ADR methods in resolving disputes. 4. To pass appropriate legislation 5. To conduct training workshops for	~~***MOJ, Mongolian Advocates Association, National Association of Mongolian Bankruptcy Administrators, Foreign***~~	• To pass the law on ADRs by the end of 2000 • To develop a full-scale ADR system so that the number of civil disputes resolved through ADR methods amount to no less than 10 percent of all civil disputes by the end of 2001	73,010 Government: 4,782	1,2,3,5,6 7

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	arbitrators and mediators 6. To develop manuals and guidebooks for arbitrators and/or persons of similar functions as well as for the general public 7. To conduct awareness-raising publicity campaigns on utilizing ADRs *8. To assess the implementation of the new Arbitration Law* *9. In implementation of ADR's actively engage NGOs. Reason: Main form of NGO's activities is that they receive claims and complaints from citizens and resolve these disputes by way of reconciliation or mediation. (Women Lawyers Association)*	~~*Trade Arbitration Court*~~			
3. To improve the procedural laws for the purpose of making justice system services more accessible 5.1.1, 5.1.2, 5.1.3, 5.2.4	1. To establish a workgroup with the purpose of studying the experience of foreign countries and prepare proposals on the following issues: A/ possibilities and means of State assistance to citizens unable to afford court expenses and attorney fees in certain cases B/ comparative studies and implications analysis of the ransfer to the courts of authority to issue warrants for procedures which impact human rights and liberties	MOJ, Supreme Court, General Prosecutor's Office	• To amend the relevant legislation and to approve the program on protection of witnesses in 2000 • To establish fund on protection of witnesses, victims and experts by the end of 2001	263,815 Government: 114,083	

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	C/ possibilities, needs and ways of protection of witnesses, victims and experts. 2. To legislate the above issues 3. To study the financial, logistical and other implications and develop a research and implementation strategy with respect to actions A and B 4. To study and to approve the fund resources and the assess financial, logistical and other implications of establishing a witness' protection fund, charter and to develop and pass the program on protection of witnesses 5. To procure resources for the fund, to train the Fund officials *6. To provide recommendations to ensure the implementation mechanisms for providing possibilities and means of State assistance to citizens unable to afford court expenses and attorney fees in certain cases* *7. To provide recommendations to GPO on ensuring the protection of witnesses, victims and experts.* 8. *To develop public education programs to enhance understanding of the principle and procedures of the adversarial process subsequent to studying the experience of countries with*				

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	mixed systems and reviewing the relevant legislation				
4. To improve coordination of activities and clarify lines of duties of justice system agencies and to enhance responsibility-imposing mechanism 4.2.1, 4.2.2, 5.5.1	1. To conduct comprehensive studies on the functions and lines of duties of and cooperation among justice system agencies. 2. To organize seminar with participation of representatives of foreign countries with differing justice structures 3. To amend the relevant legislation *4. To develop protocols for cooperation and coordination of activities of judicial and law enforcement organizations. Particularly for the new arrest and detention warrants.* *5. To ensure the accessibility of databases (UIN)* 6. *To explore the involvement of the private sector in court decision enforcement to adopt an arrangement most suitable for the market system.*	~~***The State Great Khural***~~, ~~***the Cabinet***~~ ***GCC*** ***GPO***	• To organize a seminar on a national level in 2001 • To lay the ground for more efficient justice system through amending the relevant legislation in 2001	25,284 Government: 2,690	1,2
G. TO STRENGTHEN POLITICAL INDEPENDENCE OF THE JUSTICE SYSTEM					
1. To clarify responsibilities of the General Council of Courts, the President and the Cabinet in promoting judicial independence	1. To organize roundtable discussions on the issue of the justice system independence. 2. To hold competition for best research work on the above issue 3. To set up workgroup consisting of legal scholars and specialists 4. To develop the recommendations	~~***MOJ, Supreme Court, Prosecutor's Office***~~	• To arrange the meeting/roundtable and to hold the competition for best research work within the 1st half of 2001. To set up workgroup at the meeting/roundtable • To compile the recommendations and conclusions on the judicial independence and to amend the	6,105 Government: 2,690	1-5

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
1.3.1, 1.6.2, 2.1.3, 3.4.1	and conclusions stemming from actions above. 5. To build and implement a strategy on achieving a public support for strengthening judicial independence 6. *To amend the relevant legislation: GCC to submit the needs based draft budget (in accordance with the Public Sector Management and Finance Act) to the legislative and executive branches concurrently*		relevant legislation in the 1st half of 2001		
2. To legislate a special procedure to receive comments by the Supreme Court and the General Prosecutor General on draft laws 1.3.4	1. To study establishment of part-time advisory board of legal scholars and professors with the Supreme Court and the General Prosecutor's Office in charge of developing draft legislation and preparing comments and recommendations 2. To study the experience of foreign countries 3. To legislate a procedure for reflecting the comments of Supreme Court and the General Prosecutor's Office in a draft law	Supreme Court General Prosecutor's Office	• To conduct study tours within 2001 • To legislate the procedure for obtaining the comments of judges and prosecutors on a draft law within 2001	29,585 Government: 2,690	2
3. To enhance relations between the justice system and the Constitutional Court	1. To research the role and function of constitutional courts in other countries and to document the findings 2. To develop recommendations that would enhance the government's	Supreme Court, Constitutional Court, MOJ, the Government	To pass a law or a regulation setting out the working relations among the institutions of justice and government by the end of 2001	33,105 Government: 2,690	1

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
1.3.5	and public's understanding of the role of the Constitutional Court 3. To develop recommendations relative to the interaction and coordination of the justice system, the government, and the Constitutional Court, e.g., interrelations between the case adjudication procedures and judgments of the Constitutional Court and the justice system, 4. To amend the relevant legislation if necessary *5. To review the status, jurisdiction and functions of the Constitutional Tsets*				
4. To strengthen the status of the General Council of Courts 1.6.1, 1.6.3, 2.1.3	1. To study the present legal status of the Council 2. To study the experience of similar foreign organizations with regard to the administration and management of the judiciary e.g. selection and appointment of judges, preparation of budget, etc. 3. To draw up recommendations and conclusions 4. To amend the relevant legislation if necessary *5. To delineate the "concept" of national level court administration and court administration in individual courts*	General Council of Courts	• To determine most appropriate framework for jurisdiction, structure and organization of the Council by the end of 2001	36,625 Government: 2,690	1,2

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
H. TO LAY LEGAL FRAMEWORK FOR ESTABLISHING SPECIALIZED COURTS					
1. To establish administrative courts 1.2.1, 6.1.1, 6.1.2	1. To study the activity of administrative and other specialized courts of foreign countries 2. To prepare and pass the law on administrative court 3. To secure office space and other necessary supplies for administrative courts 4. To establish administrative courts 5. To retrain judges (CLE) 6. To explore establishment of specialized divisions within courts 7. To explore establishment of other specialized courts	General Council of Courts, Supreme Court	• To have the law passed by the end of 2000 • To organize study tour(s) for at least 5 members of the workgroup and prepare recommendations on the experience of foreign countries • To establish the administrative court by the end of 2003 • To conduct training for all of administrative law judges by the end of 2002 • To develop and pass a strategy (policy) on establishment and introduction of specialized courts in 2001	332,875 Government: 198,764	1,3,4,5,6 7
2. To take organizational measures directed at assigning specialized lawyers and judges on certain types of cases 6.1.3, 6.5.8	1. To develop curriculum for training programs of specialized court judges 2. To prepare manuals and legislative codes (sets) of the specialized disciplines 3. To establish sub-databases for the specialized fields within the UIN. 4. To train at least 3 legal professionals each year from 2001 to 2003 in each of the specialized fields in countries with high standards of legal education *5. To study the necessity for specialized judges, lawyers in specific areas (e.g. in securities, taxation. loan, etc.) with the*	~~MOJ~~ ***GCC***	• To have the curriculum and the manuals ready by the end of 2001 • To start operations of the UIN sub-databases • To enable up to 10 qualified legal professionals to participate in degree programs abroad by the end of 2003	768,455 Government: 2,690	1-4

Tasks	Actions planned	Agency Responsible	Benchmarks	Costs (in US$)	External funding
	purpose of providing effective adjudication of cases 6. *To provide recommendations to the Supreme Court Research Center and the NLC Training Center on specialized training*				

- Comments developed during preparation period to the SPR workshop conducted jointly by Legal Standing Committee of the Great Hural and USAID funded project JRP, June18, 2003 are written without name of organization by italic.
- Comments of judicial institutions and NGO's are written with their names.
- Comments in bold are written comments of judicial institutions given after the Round Table Meeting, held on 24 October, 2003.
- Text stricken out was deemed no longer relevant by the stakeholders at the Round Table Meeting.
- Funding for amended is considered that included in the unified cost of the Strategic Plan. But, new actions planned and "Agency Responsible", "Benhcmarks", "Costs" and "External Funding" shall be clarified and to be reflected in the "Action Plan for the Strategic Plan of the Justice System of Mongolia" In addition to this requested shall be paid more attention on implementation of the priority tasks that already have planned in the Action Plan but didn't being implemented due to concrete reason. (Ts. Munkh-Orgil, Deputy Minister of the Justice and Home Affairs)
- In the "A" part of the Draft or "To STRENGTHEN ECONOMIC INDEPENDENCE OF THE JUSTICE SYSTEM" some important planned tasks are stipulated to be related institutions of the judiciary. But the action for Tasks A-1, 2 are planned to be related only the courts. (PGO)
- We support the Action Plan for implementation of the Strategic Plan for the Justice System of Mongolia.
- We are asking for financial assistance in implementation mini project "Social and legal environments for strengthening judiciary independence" in order to implement related duties of the NLC Rules endorsed by the Mongolian Government and goals of the USAID funded project JRP. (NLC)